

EXHIBIT A
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BROWN, ET AL,) CV-20-3664-LHK
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) NOVEMBER 4, 2021
)
GOOGLE LLC, ET AL,) PAGES 1-53
)
DEFENDANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN VAN KEULEN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: AMANDA K. BONN**
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APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

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1 SAN JOSE, CALIFORNIA

NOVEMBER 4, 2021

2 P R O C E E D I N G S

3 (COURT CONVENED AT 10:17 A.M.)

4 (THE FOLLOWING PROCEEDINGS ARE UNDER SEAL.)

5 ///

6 THE CLERK: CALLING CASE 20-CV-3664. BROWN, ET AL.
7 VERSUS GOOGLE LLC, ET AL., AND 20-CV-5146, CALHOUN, ET AL.
8 VERSUS GOOGLE, LLC.

9 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD,
10 BEGINNING WITH BROWN.

11 MS. BONN: GOOD MORNING, YOUR HONOR.

12 AMANDA BONN WITH SUSMAN GODFREY ON BEHALF OF THE BROWN
13 PLAINTIFFS.

14 THE COURT: GOOD MORNING.

15 MR. MAO: GOOD MORNING, YOUR HONOR.

16 MARK MAO ON BEHALF OF PLAINTIFFS.

17 MR. REBLITZ-RICHARDSON: GOOD MORNING, YOUR HONOR.

18 BEKO REBLITZ-RICHARDSON ON BEHALF OF THE PLAINTIFF.

19 THE COURT: GOOD MORNING.

20 MR. MCGEE: GOOD MORNING, YOUR HONOR.

21 RYAN MCGEE ON BEHALF OF THE PLAINTIFFS.

22 THE COURT: GOOD MORNING.

23 MR. SHAPIRO: GOOD MORNING, YOUR HONOR.

24 ANDREW SHAPIRO ON BEHALF OF GOOGLE.

25 MR. ANSORG: GOOD MORNING, YOUR HONOR.

1 JOSEF ANSORG, ALSO ON BEHALF OF GOOGLE.

2 MR. BROOME: GOOD MORNING, YOUR HONOR.

3 STEPHEN BROOME, ALSO FOR GOOGLE.

4 MS. TREBICKA: GOOD MORNING, YOUR HONOR.

5 VIOLA TREBICKA, ALSO ON BEHALF OF GOOGLE.

6 THE COURT: GOOD MORNING.

7 GOOD MORNING. IT'S VERY NICE TO SEE EVERYONE IN PERSON.

8 WE'VE HAD A LOT OF -- WE HAVE SPENT A LOT OF TIME TOGETHER OVER
9 THE LAST NINE MONTHS, BUT ALWAYS BY VIDEO.

10 AS I SAID, WE ARE TRANSITIONING TO MORE LIVE PROCEEDINGS,
11 SO THANK YOU FOR THE EFFORT TO BE HERE IN PERSON. I KNOW IT'S
12 NOT AS CONVENIENT AS ZOOM, BUT CERTAINLY FOR CERTAIN HEARINGS,
13 IT'S VERY HELPFUL TO THE COURT.

14 I ALSO INVITED THE PARTIES TO PREPARE DEMONSTRATIVES,
15 WHICH I UNDERSTAND WE HAVE, AT LEAST IN THE BROWN MATTER, AND
16 PUTTING THAT ON TOP OF THE NEW AV EQUIPMENT, I'VE CHALLENGED
17 THE SYSTEM TODAY. SO THANK YOU FOR YOUR PATIENCE, WE ARE
18 GETTING STARTED A LITTLE BIT LATE, BUT WE WILL GET UNDERWAY.

19 WE DO HAVE THE SPECIAL MASTER, AND SPECIAL MASTER BRUSH, I
20 WILL HAVE YOU MAKE AN APPEARANCE FOR THE RECORD, PLEASE.

21 MR. BRUSH: YES.

22 DOUGLAS BRUSH, SPECIAL MASTER, JOINED BY TIM SCHMIDT.

23 THE COURT: THANK YOU.

24 AND THANK YOU BOTH FOR JOINING BY ZOOM TODAY.

25 MR. BRUSH: IT'S A PLEASURE.

1 THE COURT: ALL RIGHT. WE ARE ON FOR A HEARING ON
2 THE PARTIES' OBJECTIONS TO THE REPORT AND RECOMMENDATION BY THE
3 SPECIAL MASTER, THE REPORT AND RECOMMENDATION FOLLOWING SEVERAL
4 MONTHS OF PROCEEDINGS BEFORE THE SPECIAL MASTER RELATED TO
5 SPECIFIC DISCOVERY ISSUES THAT WERE REFERRED TO HIM.

6 AND I OBVIOUSLY KEPT IN TOUCH WITH THE SPECIAL MASTER, AS
7 I DID WITH THE PARTIES AS WELL, AND KEPT AN EYE ON THE
8 PROGRESSION, AND I WAS PLEASED TO SEE THAT THERE WAS SOME
9 PROGRESS THROUGH THAT PROCESS AND AS WE MOVE TOWARDS
10 IDENTIFICATION AND PRODUCTION OF CERTAIN DOCUMENTS.

11 I SEE THE ORDER NOW BEFORE ME, THAT IS THE RECOMMENDED
12 ORDER FROM THE SPECIAL MASTER, AND A METHODOLOGY ON HOW TO NOW,
13 GIVEN ALL THE WORK THE PARTIES HAVE DONE, THE AREAS OF
14 CONTINUED DISAGREEMENT, HOW TO ADDRESS AND TACKLE THOSE AND
15 REALLY BRING THESE ISSUES TO A CLOSE.

16 AND I READ THROUGH THE ORDER WITH CARE, AND THEN I DID
17 HAVE AN OPPORTUNITY TO DISCUSS IT WITH SPECIAL MASTER BRUSH, I
18 WANTED TO BE SURE I UNDERSTOOD THE COMPONENTS, AND THEN I
19 TURNED TO THE PARTIES' OBJECTIONS AND CONCERNS AND I WENT
20 THROUGH THOSE WITH CARE AS WELL.

21 I ALSO WENT BACK AND LOOKED AT THE PREVIOUS SUBMISSIONS
22 FROM THE PARTIES BEFORE THE COURT. ON THESE ISSUES, THESE AND
23 RELATED ISSUES, AS WELL AS MY ORDERS TO GIVE, AGAIN, SPECIAL
24 CONSIDERATION, TO BE SURE I HAD THE WHOLE CONTEXT, MY
25 RECOLLECTION WAS REFRESHED AS TO WHERE WE HAD BEEN, AND TO THE

1 ISSUES THAT REMAIN.

2 IN REVIEWING THE OBJECTIONS ON BOTH SIDES, I DON'T SEE
3 ARGUMENTS THAT I HAVE NOT SEEN BEFORE, EITHER DIRECTLY BEFORE
4 ME OR BEFORE THE SPECIAL MASTER, EITHER THAT HAVE COME UP
5 EITHER IN BRIEFING OR AT THE HEARING. AND I THINK I HAVE A
6 PRETTY GOOD IDEA AS TO WHAT THE PARTIES' CONCERNS ARE, AND I
7 LOOK FORWARD TO THE DISCUSSION HERE TODAY.

8 A WORD ABOUT MY PREVIOUS ORDERS, WHICH BOTH SIDES, ALL
9 PARTIES REFER TO FROM TIME TO TIME IN THEIR OBJECTIONS, WHICH
10 IS THIS: TO THE EXTENT MY ORDERS PREDATE REFERRAL TO THE
11 SPECIAL MASTER, I VIEW THOSE AS A STARTING POINT, AND THEN I
12 REFERRED THE MATTER TO THE SPECIAL MASTER, EXPECTING THE
13 APPLICATION OF HIS EXPERTISE AND HIS WORK AND TIME WITH YOU
14 ALL, TO REALLY HONE AND FINE TUNE MY ORDER AS HIS EXPERTISE
15 DETERMINES, TO FRANKLY, BETTER HONE IT AND BRING IT WITHIN ANY
16 PARAMETERS WITH REGARDS TO WHAT IS RELEVANT AND PROPORTIONAL.

17 I SEE THE PROCESS ON A CONTINUUM, IF YOU WILL. AND THAT'S
18 HOW I LOOKED AT THE CONTEXT OF PROCEEDINGS, THE SPECIAL
19 MASTER'S RECOMMENDATION AND THE PARTIES' OBJECTIONS TO THOSE.

20 OKAY. I THINK IT'S EVIDENT FROM THE SPECIAL MASTER'S
21 REPORT AND RECOMMENDATION, THAT THE PARTIES HAVE BEEN GIVEN
22 LOTS OF OPPORTUNITY TO NEGOTIATE DISCOVERY ISSUES, REACH
23 COMPROMISES, WHERE YOU CAN'T REACH A COMPROMISE, TO ASK TO BE
24 HEARD TO TRY TO DEVELOP OTHER WAYS AROUND WHATEVER THE IMPASSE
25 IS, AND THAT PROCESS CONTINUES TODAY.

1 AND THE RESULT OF TODAY'S PROCEEDINGS WILL BE A COURT
2 ORDER THAT WILL, YOU KNOW, I EITHER ADOPT THE SPECIAL MASTER
3 ORDER, ADOPT WITH MODIFICATIONS, BUT IT WILL LEAD TO A CLOSE OF
4 DISCOVERY ON THESE ISSUES. WE ARE DRIVING THIS TO A
5 CONCLUSION.

6 YOU ALL HAVE YOUR CASE CALENDARS, YOU ALL HAVE OTHER
7 BRIEFING SCHEDULES, SO THAT'S THE OBJECTIVE AND THAT'S WHERE WE
8 ARE HEADED, AND WHAT WILL COME OUT OF THIS PROCEEDING WILL BE A
9 DISCOVERY ORDER FROM THE COURT.

10 AND ALL I KNOW FOR SURE IS THAT WE WILL HAVE -- IT WILL
11 HAVE A TIGHT TIMELINE. I APPRECIATE THE TIMELINES IN THE
12 SPECIAL MASTER'S RECOMMENDATION, AND WHETHER THOSE PRECISE
13 TIMELINES STAY IN PLACE OR NOT, IT WILL CERTAINLY BE VERY
14 TIGHT, AGAIN, WITH AN EYE TO THE OVERALL CASE SCHEDULE IN BOTH
15 CASES.

16 ALL RIGHT THEN. LET'S GO AHEAD AND GET UNDER WAY, AND WE
17 WILL START WITH BROWN, AND WE WILL START WITH THE PLAINTIFF'S
18 OBJECTIONS AND THEN WE WILL TURN TO GOOGLE. AND I DO HAVE HARD
19 COPIES OF THE PRESENTATION SLIDES THAT WERE PROVIDED, WHICH
20 ACTUALLY I LIKE, SO I CAN ALWAYS SCRIBBLE ON THEM. AND I JUST
21 ASK, BECAUSE WE ARE USING THE P.A. SYSTEM, WE HAVE THE SPECIAL
22 MASTER ON ZOOM, THAT COUNSEL SPEAK INTO THE MICROPHONES, SPEAK
23 SLOWLY AND CLEARLY.

24 IF YOU ARE MORE COMFORTABLE SITTING AT TABLE AND USING THE
25 MICROPHONE THERE, IN LIGHT OF OUR COVID PRECAUTIONS, YOU ARE

1 WELCOME TO DO THAT. IF YOU WANT TO BE AT THE PODIUM, YOU ARE
2 WELCOME TO DO THAT AS WELL.

3 MS. BONN: THANK YOU, YOUR HONOR.

4 THE COURT: I DID SET TIME LIMITS FOR THE
5 PRESENTATIONS TODAY, AGAIN, TO HELP THE PARTIES SORT OF GUIDE
6 AND PRIORITIZE THEIR COMMENTS. IF YOU WOULD LIKE TO RESERVE
7 SOME TIME, LET ME KNOW.

8 MS. BONN: WE WOULD, YOUR HONOR. I THINK WE WOULD
9 LIKE TO RESERVE SEVEN MINUTES, IF WE COULD.

10 THE COURT: OKAY. ALL RIGHT.

11 MS. BONN: THANK YOU.

12 AND I AM GOING TO BRIEFLY -- I THINK I CAN SHARE MY SCREEN
13 AND GET THE SLIDES UP SO FOLKS CAN SEE THEM.

14 THANK YOU, YOUR HONOR.

15 MAY IT PLEASE THE COURT, I DID WANT TO START BY ADDRESSING
16 THE COMMENTS YOUR HONOR JUST MADE, WHICH PLAINTIFFS UNDERSTAND
17 AND APPRECIATE. AND WE VERY MUCH APPRECIATE THE CHALLENGING
18 TASK THAT THE SPECIAL MASTER HAS HAD BEFORE HIM AND THE WORK
19 HE'S DONE TO MOVE THE BALL FORWARD. AND THE BALL HAS BEEN
20 MOVED FORWARD, AND WE THINK THAT THE FRAMEWORK HE SETS OUT IS
21 VERY HELPFUL IN TERMS OF A CERTAIN CATEGORY OF DATA.

22 OUR OBJECTIONS, WHICH I HOPE TO FRAME, ARE REALLY TO AN
23 ISSUE THAT AROSE IN THIS WHOLE PROCESS, WHICH IS THAT GOOGLE
24 MADE CERTAIN LEGAL ARGUMENTS THAT CERTAIN CATEGORIES OF DATA
25 WERE EITHER IRRELEVANT OR THAT GOOGLE LEGALLY COULD NOT PRODUCE

1 OR SHARE INFORMATION ABOUT CERTAIN TYPES OF DATA IN ORDER TO
2 PROTECT PRIVACY.

3 AND IN OUR DISCUSSIONS WITH THE SPECIAL MASTER, I THINK
4 THAT THERE WAS A LINE THAT WAS DRAWN WHERE THE SPECIAL MASTER
5 SAID, YOU KNOW, I'M HERE TO ADDRESS TECHNICAL ISSUES, BUT LEGAL
6 OBJECTIONS, A LEGAL POSITION ON WHAT IS OR IS NOT LEGALLY
7 RELEVANT, WHETHER GOOGLE HAS A LEGAL DEFENSE TO PRODUCING
8 CERTAIN DATA, THOSE ARE ISSUES FOR THE COURT TO DECIDE.

9 AND SO THE PROCESS THAT LEAD TO THE REPORT AND
10 RECOMMENDATION THAT WE HAVE NOW IS ONE THAT BASICALLY ACCEPTS
11 AS A STARTING POINT, THAT THE CATEGORIES OF DATA GOOGLE
12 OBJECTED TO ON LEGAL GROUNDS, ARE ESSENTIALLY OFF THE TABLE.
13 AND IT TAKES AS A STARTING POINT, [REDACTED] DATA SOURCES THAT GOOGLE
14 ESSENTIALLY AGREED TO DISCLOSE INFORMATION ABOUT, AFTER ITS
15 LEGAL OBJECTIONS HAD BEEN MADE AND AFTER THEY CARVED OUT,
16 UNILATERALLY AND IN BROAD CATEGORIES, ENTIRE BUCKETS OF DATA
17 THAT ARE ACTUALLY VERY IMPORTANT FOR THE PLAINTIFFS TO BE ABLE
18 TO IDENTIFY CLASS MEMBERS.

19 SO IN TERMS OF OUR PRESENTATION TODAY, WHAT I WOULD LIKE
20 TO DO IS EXPLAIN VERY BRIEFLY THE TYPES OF DATA THAT WE ARE
21 INTERESTED IN AND WHY, THE PROCESS THAT LEAD TO THIS
22 RECOMMENDATION, AND OUR VIEW OF HOW IT SHOULD BE MODIFIED TO
23 MAKE SURE THAT WE CAN BRING THESE ISSUES TO A CLOSE, AVOID
24 LITIGATING FURTHER DISPUTES AND GET TO A POINT WHERE WE CAN
25 MAKE INFORMED DECISIONS TO NARROW OUR SEARCH REQUESTS.

1 AFTER THAT, MY COLLEAGUE RYAN MCGEE WILL ADDRESS THE ISSUE
2 OF CLASS MEMBER DATA AND OUR 30(B) (6) NOTICE, AND FINALLY
3 MR. MAO WILL ADDRESS THE ISSUE OF SOURCE CODE.

4 SO JUST TO FRAME WHAT THE PLAINTIFFS ARE TRYING TO DO
5 HERE, WE ARE NOT TRYING TO TURN OVER GOOGLE AS AN ENTIRE
6 COMPANY AND EXAMINE EVERY NOOK AND CRANNY OF THEIR DATA
7 SYSTEMS. THAT'S NOT WHAT WE WANT. FRANKLY, WE DON'T HAVE THE
8 RESOURCES TO DO THAT. IT'S NOT WHAT'S CALLED FOR IN THIS CASE.

9 WHAT WE ARE TRYING TO DO IS, I THINK, PRETTY NARROW. WE
10 WANT TO BE ABLE TO DETERMINE HOW WE CAN IDENTIFY CLASS MEMBERS
11 USING GOOGLE'S DATA, NUMBER ONE. NUMBER TWO, WE WANT TO BE
12 ABLE TO IDENTIFY THE NUMBER OF INTERCEPTIONS OF PRIVATE
13 BROWSING DATA THAT HAPPENED IN INCOGNITO MODE OR OTHER PRIVATE
14 BROWSING SESSIONS. AND NUMBER THREE, WE WANT TO BE ABLE TO
15 IDENTIFY THE WAYS AND THE AMOUNTS THAT GOOGLE MAY HAVE PROFITED
16 FROM THOSE INTERCEPTIONS, BECAUSE THAT COULD SUPPORT OUR UNJUST
17 ENRICHMENT DAMAGES MODEL.

18 SO WE ARE TRYING TO DO THAT, AND YET WE DON'T HAVE
19 COMPLETE INSIGHT INTO GOOGLE'S SYSTEMS, GOOGLE'S DATA SOURCES,
20 AND THE WAYS IN WHICH GOOGLE, ITSELF, EITHER DOES OR CAN
21 PROVIDE DATA THAT WOULD HELP SHED LIGHT ON THESE THREE
22 QUESTIONS.

23 AND SO PART OF WHAT WE HAVE BEEN TRYING TO DO IS GAIN
24 ENOUGH INSIGHT THAT WE CAN MAKE TARGETED SPECIFIC REQUESTS THAT
25 ALLOW US TO GET TO THIS POINT.

1 I KNOW THERE'S A LOT ABOUT THE TECHNOLOGY, IDENTIFIERS,
2 AND I WANT TO BRIEFLY EXPLAIN WHY THE CATEGORIES OF IDENTIFIERS
3 WE HAVE BEEN ASKING ABOUT MATTER.

4 IN AN INCOGNITO BROWSING SESSION, THERE ARE A NUMBER OF
5 IDENTIFIERS THAT A USER COULD ESSENTIALLY BE TAGGED WITH BY
6 GOOGLE. IF I WERE TO OPEN AN INCOGNITO BROWSING SESSION AND
7 START MY BROWSING SESSION AT GOOGLE.COM OR EVEN JUST TYPING
8 INTO THE OMNIBAR AT THE TOP OF MY CHROME BROWSER, GOOGLE WILL
9 TAG ME WITH WHAT'S CALLED A [REDACTED] IDENTIFIER. THEY WILL
10 ALSO TAG ME WITH A [REDACTED] IDENTIFIER, LIKE THE COURT'S
11 WEBSITE, THAT ISSUE CAME UP EARLIER IN THIS CASE.

12 NUMBER TWO, IN MY BROWSING SESSION, I THEN GO TO A
13 THIRD-PARTY WEBSITE, LIKE NEWYORKTIMES.COM, FOR INSTANCE, THEY
14 WILL TAG ME WITH A [REDACTED] IDENTIFIER. AND NUMBER THREE, IF
15 WHEN I'M BROWSING A THIRD PARTY WEBSITE, I THEN LOG INTO THAT
16 WEBSITE, SO I'VE RUN THROUGH MY FREE VIEWS OF ARTICLES ON NEW
17 YORK TIME AND I HAVE TO LOG INTO MY ACCOUNT, THEN I MIGHT BE
18 TAGGED WITH SOMETHING CALLED A PUBLISHER PROVIDED ID A PPID,
19 BECAUSE THE *NEW YORK TIMES* KNOWS WHO I AM AND THAT IS SENT TO
20 GOOGLE AS WELL.

21 FINALLY, IF AFTER MY PRIVATE BROWSING SESSION IN INCOGNITO
22 WHERE I HAVE BEEN BROWSING THIRD PARTY WEBSITES, AT THE END OF
23 MY SESSION I SAY I WOULD ALSO LIKE TO CHECK MY GMAIL AND THEN
24 AT THE END OF MY SESSION GO LOG INTO MY GMAIL ACCOUNT, GOOGLE
25 SAYS, AH HA, NOW YOU ARE LOGGED IN, NOW WE WILL TAG YOU WITH

1 SOMETHING CALLED GAIA, AND WE WILL LINK ALL OF THE OTHER
2 BROWSING DATA YOU WERE ENGAGED IN UP UNTIL THAT POINT WITH YOUR
3 AUTHENTICATED GAIA LOGIN AT THE END OF THE SESSION.

4 PART OF WHY I THINK IT'S IMPORTANT TO UNDERSTAND THAT
5 THESE IDENTIFIERS CAN ALSO BE ATTACHED TO A PLAINTIFF IN AN
6 INCOGNITO SESSION, AND YET GOOGLE HAS MADE CATEGORICAL
7 OBJECTIONS TO PRODUCING THINGS LIKE [REDACTED] OR GAIA LOGIN DATA
8 BECAUSE THEY SAY THAT'S NOT THE ACTIONABLE INTERCEPT.

9 AND ACCEPTING THAT AS TRUE FOR THE MOMENT, IT DOES NOT
10 MATTER BECAUSE FROM OUR PERSPECTIVE, ANY OF THOSE IDENTIFIERS
11 THAT ARE USED TO IDENTIFY PLAINTIFFS WHO ARE ENGAGED IN PRIVATE
12 BROWSING IN INCOGNITO, CAN BE USED AS A METHOD OF IDENTIFYING
13 CLASS MEMBERS, WHETHER ALONE OR IN COMBINATION WITH THOSE OTHER
14 DATA SOURCES.

15 SO I THINK IT'S REALLY IMPORTANT TO UNDERSTAND THAT THAT'S
16 WHY WHEN WE HEAR THAT THERE'S A CATEGORICAL OBJECTION, YOU
17 KNOW, WE ARE NOT GOING TO GIVE YOU ANYTHING ABOUT GAIA DATA,
18 LOGGED IN DATA, WE ARE NOT GOING TO GIVE YOU ANYTHING ABOUT
19 [REDACTED] DATA, IT'S TYING ONE HAND BEHIND OUR BACK IN BEING
20 ABLE TO IDENTIFY THE CLASS MEMBERS.

21 AND I THINK YOUR HONOR IS RIGHT, WE STARTED WITH THE
22 APRIL 30TH ORDER, WHICH THEN LEAD TO A PROCESS IN FRONT OF THE
23 SPECIAL MASTER. BUT I THINK IT'S IMPORTANT TO REMEMBER THAT IN
24 THE COURT'S ORDER, THE COURT SAID LOOK, I THINK THE PLAINTIFFS
25 SHOULD BE ALLOWED TO TEST HOW THEY COULD LINK AUTHENTICATED AND

1 UNAUTHENTICATED DATA TO IDENTIFY THE PLAINTIFFS. AND THE COURT
2 SAID IT'S NOT JUST THE PLAINTIFFS, BUT IT'S THEIR DEVICES. YOU
3 KNOW, IF YOU CAN SHOW THAT THERE'S CERTAIN DATA THAT'S LINKABLE
4 TO SOMEONE'S DEVICE, I DON'T THINK YOU CAN WITHHOLD THAT,
5 BECAUSE MAYBE, YOU KNOW, MARY'S DAUGHTER USED HER IPHONE AND IT
6 WASN'T MARY AT THAT MOMENT, THAT KIND OF RESTRICTION ISN'T
7 FAIR.

8 AND YET WHAT HAPPENED AFTER THAT IS THAT GOOGLE DID NOT
9 PRODUCE ALL AUTHENTICATED DATA, THEY TOOK THE POSITION IN FRONT
10 OF THE SPECIAL MASTER THAT AUTHENTICATED DATA IS IRRELEVANT OR
11 OUT OF SCOPE. AND AS WE SAW EARLIER, THAT'S SIMPLY NOT THE
12 CASE BECAUSE THERE IS AUTHENTICATED, WHAT GOOGLE MAY TERM
13 AUTHENTICATED DATA THAT CAN BE LINKED IN ORDER TO IDENTIFY
14 CLASS MEMBERS. AND IN FACT, GOOGLE'S OWN DOCUMENTS, AND I'M
15 SHOWING A SLIDE FROM ONE OF THEIR DOCUMENTS, [REDACTED]

16 [REDACTED]
17 [REDACTED].

18 SO WE ARE NOT JUST SAYING THIS IS TRUE AS A THEORETICAL
19 MATTER, [REDACTED]

20 [REDACTED].

21 THEN WHAT GOOGLE DID IS WE SAID OKAY, WELL WHAT ABOUT THE
22 UNAUTHENTICATED DATA, CAN YOU GIVE US UNAUTHENTICATED DATA THAT
23 CAN BE LINKED TO OUR PLAINTIFFS OR THEIR DEVICES BY THEIR IP
24 ADDRESS OR BY THEIR USER AGENT STRING OR BY A [REDACTED] COOKIE,
25 FOR INSTANCE, IF THEY STARTED AN INCOGNITO SESSION WITH A

1 GOOGLE SEARCH. AND GOOGLE REFUSED TO DO THAT. THEY SAID, WE
2 DON'T SEARCH FOR YOUR UNAUTHENTICATED DATA USING ANY OF THOSE
3 METRICS BECAUSE IP ADDRESS AND USER AGENT ISN'T ONE HUNDRED
4 PERCENT LINKABLE TO THE PLAINTIFFS, AND BECAUSE [REDACTED] IS
5 IRRELEVANT, IT'S OUT OF SCOPE.

6 AND ONCE AGAIN, GOOGLE'S OWN INTERNAL DOCUMENTS SHOW THAT

7 [REDACTED]
8 [REDACTED]
9 [REDACTED].

10 SO WHAT DID GOOGLE GIVE TO US? GOOGLE, IN MAY, SAID
11 PLAINTIFFS, YOU SHOULD GO AND OPEN A NEW INCOGNITO SESSION, A
12 BRAND-NEW INCOGNITO SESSION, A BRAND NEW ONE, FOR THE FIRST
13 TIME IN MAY, AND THEN WE WILL SHOW YOU HOW TO FIND A CERTAIN
14 TYPE OF [REDACTED] COOKIE. GIVE THAT TO US AND THEN WE WILL LOOK
15 UP SOME DATA.

16 AND ESSENTIALLY WHAT THAT MEANS IS WE DIDN'T ACTUALLY
17 INITIALLY GET ANY DATA FROM BEFORE MAY OF THIS YEAR BECAUSE
18 THEY BASICALLY ASKED US TO GENERATE A NEW INCOGNITO SESSION
19 WITH A NEW [REDACTED] COOKIE. AND AS IT TURNS OUT, AND WE
20 DISCOVERED FROM THE DOCUMENTS, IT ESSENTIALLY WASN'T EVEN A
21 FRUITFUL EXERCISE BECAUSE A [REDACTED] COOKIES ARE DIFFERENT FROM
22 THE [REDACTED] IDENTIFIER, WHICH IS REALLY WHAT WE ARE FOCUSED
23 ON.

24 AND SO ESSENTIALLY, YOU KNOW, WE WOUND UP NOT ONLY WITH
25 NOT BEING CLOSE TO YOUR HONOR'S ORDER, BUT WITH ENTIRE

1 CATEGORIES OF DATA THAT YOUR HONOR HAD ORDERED, BEING SWEEPED
2 AWAY BY LEGAL ARGUMENTS ABOUT RELEVANCE, OR THE NOTION THAT IT
3 WOULD INVADE PRIVACY TO PRODUCE THIS DATA TO THE PLAINTIFFS.

4 THEN WE GOT YOUR SEPTEMBER ORDER, WHICH I THINK SAID GO
5 BACK TO STEP ONE, DISCLOSE WHAT THE SOURCES ARE, THEN DISCLOSE
6 INFORMATION ABOUT THE SOURCES SO WE CAN MEET AND CONFER AND
7 FIGURE OUT WHAT'S REALLY RELEVANT, AND THEN WITH THE SPECIAL
8 MASTER, WORK OUT TARGETED SEARCHES FOR THOSE SOURCES.

9 THE PROBLEM IS GOOGLE THEN TOOK THE SAME APPROACH YET
10 AGAIN. SO GOOGLE SAID, WE'RE NOT GOING TO IDENTIFY SOURCES
11 THAT CONTAIN ONLY AUTHENTICATED DATA. SO WE ARE TAKING
12 AUTHENTICATED DATA SOURCES OFF THE TABLE, EVEN THOUGH AS WE SAW
13 EITHER, THEY CAN BE USED TO IDENTIFY INCOGNITO USAGE. SO THEY
14 DIDN'T IDENTIFY AUTHENTICATED DATA SOURCES.

15 THEN THEY SAID, WE ARE NOT GOING TO IDENTIFY SOURCES THAT
16 CONTAIN SEARCH DATA BECAUSE SEARCH ISN'T AN ACTIONABLE
17 INTERCEPTION. BUT ONCE AGAIN, WHAT WE SAW EARLIER IS THAT
18 SEARCH DATA CAN BE USED TO IDENTIFY PEOPLE WHO STARTED THEIR
19 INCOGNITO BROWSING SESSION WITH A GOOGLE SEARCH BEFORE THEY
20 THEN WENT ON TO THIRD PARTY WEBSITES.

21 AND IN FACT, GOOGLE'S OWN DOCUMENTS SHOW THAT, AND I'M
22 SHOWING ONE EXAMPLE, [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED].

1 SO GOOGLE'S OWN DOCUMENTS SHOW THAT [REDACTED]
2 [REDACTED]
3 [REDACTED], AND THAT GOOGLE UNILATERALLY TOOK
4 SEARCH LOGS OFF THE TABLE. GOOGLE THEN IDENTIFIED [REDACTED] SOURCES.

5 THE COURT: TELL ME WHICH SLIDE YOU ARE ON, MS. BONN.
6 I SEE IT ON THE SCREEN, BUT I'M TRYING TO LOOK FOR IT --

7 MS. BONN: 24 -- 26.

8 OKAY. THANK YOU, YOUR HONOR.

9 THE COURT: NOW I TOOK YOU OFF TRACK.

10 MS. BONN: IN ANY EVENT, LET ME JUST SEE IF I CAN PUT
11 THIS BACK.

12 SO GOOGLE IDENTIFIED [REDACTED] DATA SOURCES AFTER THEY TOOK
13 "AUTHENTICATED" OFF THE TABLE, AFTER THEY TOOK "SEARCH DATA"
14 OFF THE TABLE, AND WITHIN THE [REDACTED] THEY IDENTIFIED, WE CAN TELL
15 THAT IT'S INCOMPLETE IN SEVERAL RESPECTS.

16 AND JUST AS ONE EXAMPLE, IN OUR EXHIBIT D THAT WE PUT IN
17 WITH OUR OBJECTIONS TO THE REPORT, IT'S A DOCUMENT OF GOOGLE'S
18 TITLED [REDACTED]

19 AND IN THIS [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED].

23 [REDACTED]
24 [REDACTED] THERE
25 ARE LOGS IN HERE, IN THIS VERY DOCUMENT, THAT WERE NOT INCLUDED

1 IN GOOGLE'S LIST OF THE [REDACTED].

2 SO IN GOOGLE'S INTERNAL PRIMER ON [REDACTED],
3 AND HERE ARE THE LOGS YOU LOOK TO, THERE ARE LOGS IN THAT VERY
4 DOCUMENT THAT THEY DIDN'T GIVE US IN THEIR LIST OF [REDACTED].

5 AND THEN WITHIN THE LIST OF [REDACTED], THEY DIDN'T PROVIDE ALL OF
6 THE FIELDS OR SCHEMA OR DESCRIPTIONS AS ORDERED, AND THEY SAID,
7 WE WILL ONLY SEARCH FIVE OF THEM. WE ASKED FOR SEVEN, THEY
8 SAID, WE WILL ONLY SEARCH FIVE, AND WE ARE NOT GOING TO SEARCH
9 [REDACTED] OR [REDACTED] TIED TO YOUR IP ADDRESS, TIED TO YOUR USER
10 AGENT STRING OR TIED TO YOUR DEVICE, [REDACTED]

11 [REDACTED]
12 [REDACTED].

13 AND SO THE POINT OF ALL OF THIS, YOUR HONOR, ISN'T TO
14 REHASH THE PAST AND GET MIRED DOWN IN PAST PROBLEMS, BUT IT'S
15 TO SAY THAT THE SPECIAL MASTER'S ORDERS WHICH START WITH THOSE
16 [REDACTED] DATA SOURCES, ACCEPTS THOSE AS ITS STARTING POINT, GOOGLE'S
17 LEGAL ARGUMENTS THAT THESE OTHER BUCKETS, SHOULD SIMPLY BE OFF
18 THE TABLE. AND I THINK THAT'S OUR FUNDAMENTAL CONCERN, NUMBER
19 ONE.

20 FUNDAMENTAL CONCERN NUMBER TWO IS THAT WE HAVE BEEN
21 THROUGH THIS PROCESS, ESSENTIALLY TWICE, AND EACH TIME, EVEN
22 FACED WITH WHAT WE THOUGHT WERE RELATIVELY CLEAR COURT ORDERS,
23 GOOGLE HAS REASSERTED ITS RELEVANCE OBJECTIONS, WE CAN'T
24 PRODUCE THIS BECAUSE OF USER PRIVACY OBJECTIONS, OVER AND OVER.
25 AND WE ARE CONCERNED THAT WE ARE JUST GOING TO CONTINUE TO GET

1 MIRED DOWN IN THOSE TYPES OF DEBATES AND DISPUTES THAT WILL
2 SLOW THINGS DOWN.

3 AND FRANKLY, WHEN WE THINK ABOUT WHAT WILL BREAK THIS LOG
4 JAM, WE DO NOT WANT TO SEARCH EVERY SINGLE DATA SOURCE ON THE
5 PLANET, WE DON'T WANT TO SEARCH EVERY DATA SOURCE THAT GOOGLE
6 HAS, BUT WHAT WE DO WANT IS TO HAVE INSIGHT INTO WHAT ARE THE
7 DATA SOURCES, HOW CAN THEY BE SEARCHED, WHAT IS THE DATA THAT'S
8 AVAILABLE SO THAT WE, IN CONJUNCTION WITH OUR EXPERTS, CAN MAKE
9 INTELLIGENT AND INFORMED DECISIONS ABOUT THE SPECIFIC SEARCHES
10 WE WANT TO RUN THAT WILL HELP US IDENTIFY CLASS MEMBERS, THE
11 NUMBER OF ILLEGAL INTERCEPTIONS, AND GET TO OUR DAMAGES MODEL.
12 THAT'S WHAT WE WANT.

13 AND FRANKLY, YOUR HONOR, I THINK THE ONE THING THAT MIGHT
14 HELP BRING THIS LOG JAM, IS ALLOWING OUR EXPERTS TO INSPECT
15 THESE TOOLS, BECAUSE THAT WILL ENABLE OUR EXPERTS TO SEE FOR
16 THEMSELVES, WHAT ARE THE FIELDS THAT CAN BE QUERIED, HOW CAN A
17 QUERY BE FORMED, WHAT DO WE REALLY NEED.

18 AND THAT WILL ALLOW US, IN THE PROCESS THE SPECIAL MASTER
19 ENVISIONS, TO BE TARGETED, CRISP AND CLEAR WITH OUR SEARCHES
20 THAT WE ACTUALLY WANT GOOGLE TO RUN. SO THAT'S REALLY OUR
21 PRIMARY REQUEST.

22 I THINK WITH THAT FOR TIME REASONS, I'M GOING TO ASK MY
23 COLLEAGUES TO ADDRESS THE OTHER ISSUES, BUT I DO WANT TO MAKE
24 CLEAR YOU KNOW FROM OUR PERSPECTIVE, THE SPECIAL MASTER HAS
25 MOVED THE PROCESS ALONG, WHAT HE PROPOSES IS A HELPFUL WAY TO

1 DEAL WITH THE [REDACTED] DATA SOURCES THAT GOOGLE HAS IDENTIFIED. THE
2 PROBLEM IS THE THINGS THAT GOOGLE HAS UNILATERALLY TAKEN OFF
3 THE TABLE, AND FRANKLY THE AMOUNT OF TIME THAT'S LEFT TO GET TO
4 WHERE WE NEED TO GET TO.

5 THANK YOU.

6 THE COURT: THANK YOU, MS. BONN.

7 MR. MAO: SORRY, COULD WE ASK FOR A TIME CHECK?

8 THE COURT: I HAVE YOU AT 18 MINUTES, BUT I DO NOT
9 WANT TO ENCOURAGE PEOPLE TO SPEAK VERY FAST.

10 MR. MCGEE: MY MOTHER IS A RETIRED COURT REPORTER,
11 JUDGE, SO I THINK I WILL SPEAK SLOWLY.

12 GOOD MORNING, YOUR HONOR. RYAN MCGEE ON BEHALF OF THE
13 PLAINTIFFS. I WILL BRIEFLY, WITH THE TIME REMAINING, ADDRESS
14 P6, P16 AND THE 30(B)(6).

15 FOR P6, YOUR HONOR, WE ENGAGED WITH THE SPECIAL MASTER'S
16 PROCESS, WHICH WAS NARROW, WITH THE ITERATIVE SEARCHES. AND
17 WHAT WE WERE LOOKING FOR WERE TWO CLASSES OF INFORMATION. THE
18 FIRST WERE -- EXCUSE ME, DATA SOURCES THAT CONTAIN THE X CLIENT
19 DATA HEADER, WHICH ALSO GOES INTO P16. AND FOR THAT, WE ASKED
20 FOR RANDOM SAMPLES OF 1,000 COMPLETE DATA SOURCES THAT
21 CONTAINED VALUES FOR THE X PLAN DATA HEADER.

22 BECAUSE AGAIN, TO REMIND THE COURT, IN THE COMPLAINT AND
23 THROUGHOUT THE PROCESS, WE HAVE ALLEGED THAT A NULL SET FOR THE
24 X CLIENT DATA HEADER WHERE NO VALUE RETURNED IS AN INDICATOR OF
25 INCOGNITO.

1 THE COURT: I REMEMBER THE ARGUMENT WELL. THANK YOU.

2 MR. MCGEE: THANK YOU, JUDGE.

3 AND THEN THE SECOND CATEGORY OF THAT WERE [REDACTED] RECORDS FROM
4 ALL [REDACTED] DATA SOURCES THAT GOOGLE IDENTIFIED THAT HAD AN ABSENCE
5 OF [REDACTED]. GOOGLE JUST SAID NO. THEY DID NOT DEMONSTRATE
6 ANY BURDEN TO THE COURT, THEY SUBMITTED NOTHING TO THE COURT
7 THAT SAID IT WAS A BURDEN OR IMPOSSIBLE OR ANYTHING ELSE, THEY
8 JUST SAID NO.

9 SO RIGHT NOW WHAT WE ARE ASKING FOR IS A COURT ORDER,
10 WHICH WOULD COMPLY WITH GOOGLE'S PRIVACY POLICY, THAT WOULD
11 PERMIT THEM TO TURN THAT INFORMATION OVER TO US.

12 SO WE WANT THE SAMPLE DATA, YOUR HONOR, FROM THAT PROCESS,
13 WE WANT ALL OF THE DATA SOURCES THAT COULD CONTAIN THE X CLIENT
14 DATA HEADER AND GWS THAT WOULD BE FROM BROWSING SOURCES.

15 AND THEN NUMBER THREE, WE WANT TO RUN ITERATIVE SEARCHES,
16 LIKE WITH P3, FOR THAT INFORMATION.

17 BUT IF THAT'S NOT TURNED OVER, THERE SHOULD BE
18 CONSEQUENCES, AND THOSE WOULD BE SIMILAR TO THE SANCTIONS THAT
19 WE REQUESTED IN THE MOTION THAT YOU HAVE STAYED. SO THAT'S P6
20 AND P16.

21 AS FOR THE 30(B)(6), AN ADEQUATELY PREPARED REPRESENTATIVE
22 FROM GOOGLE TO TESTIFY. WE DID BRIEF THIS, BUT TO REMIND THE
23 COURT, THERE WERE THE 15 OF 21 DATA SOURCES THAT
24 DOCTOR BERNTSON WAS ENTIRELY UNPREPARED TO TESTIFY TO FROM THE
25 DREMEL TOOL. THOSE INCLUDED ADVERTISING ID'S DEVICE ID'S AND

1 IP ADDRESSES, AND IT WAS INFORMATION THAT WAS MAPPED TO THOSE
2 ID'S, STORED IN A DIFFERENT PART OF [REDACTED], THAT AGAIN,
3 DOCTOR BERNTSON WAS UNPREPARED TO TESTIFY TO.

4 AND WITH RESPECT TO TOPIC ONE, THE LOG SOURCES, HE WAS
5 ONLY PREPARED TO TESTIFY TO GOOGLE ANALYTICS AND IT MANAGER.

6 SAME THING WITH TOPIC TWO, THIS WAS THE ABILITY TO SEARCH
7 THOSE SOURCES. SAME WITH THREE, HOW THE SOURCES WERE COMPILED
8 OR THE ORIGINS OF INFORMATION. SOURCE FOUR -- OR EXCUSE ME,
9 TOPIC FOUR WERE THE RETENTION POLICIES. TOPIC SIX WAS THE ID
10 AND CORRELATION OF ID'S, WHICH WOULD AGAIN GO TOWARD THE P6
11 MATTER. AND THEN TOPIC FIVE WAS ALL TESTIMONY FOR PRESERVATION
12 OF THESE SOURCES.

13 SO JUDGE WITH THAT, WE WILL TURN IT OVER TO MR. MAO.

14 THE COURT: ALL RIGHT. THANK YOU, MR. MCGEE.

15 MR. MAO: MR. MAO.

16 MS. BONN: I'M SORRY, MS. FANTHORPE, I MAY NEED YOU
17 TO LET ME BACK IN. I GOT TOO EXCITED.

18 THE COURT: MR. MAO.

19 MR. MAO: GOOD MORNING, YOUR HONOR.

20 THE COURT: GOOD MORNING.

21 MR. MAO: I GOT FOUR MINUTES, I'M DETERMINED TO DO IT
22 IN THREE.

23 THE COURT: AGAIN, THAT DOES NOT MEAN SPEAK FAST.

24 MR. MAO: I UNDERSTAND.

25 SO I HAVE THE RESPONSIBILITY OF EXPLAINING SOURCE CODE.

1 BUT WHAT I WANTED TO DO IS I DID WANT TO GO OVER SOME OF THE
2 SLIDES, BECAUSE WHAT I WANT TO DEMONSTRATE TO YOU, YOUR HONOR,
3 IS WHY SOURCE CODE AND A LOT OF THE DATA IN WHICH WE ARE
4 SEEKING, AND MS. BONN WAS COVERING, IS IMPORTANT, NOT JUST FOR
5 OUR CASE, BUT ALSO BECAUSE OF GOOGLE'S CASE.

6 THE COURT: ALL RIGHT.

7 AND LET ME JUST PREFACE THIS, MR. MAO, WITH, ON THE SOURCE
8 CODE QUESTION, I KEEP COMING BACK TO THE REASONABLE AND
9 NECESSARY STANDARD.

10 THIS IS A TOPIC THAT I THINK THE PARTIES ON BOTH SIDES
11 BRIEFED, IT WAS IN A CHART, BUT THERE WERE LOTS -- THEY WERE
12 ESSENTIALLY LEGAL BRIEFS. SO I DID LOOK AT THOSE CAREFULLY,
13 AND THAT'S REALLY THE QUESTION IN MY MIND, IS WE HAVE THIS
14 METHODOLOGY FROM THE SPECIAL MASTER, OBJECTIONS
15 NOTWITHSTANDING, AND SO HOW DO WE GET TO NECESSITY WHEN IT
16 COMES TO SOURCE CODE, GIVEN WHAT THE PLAINTIFFS ARE SEEKING AND
17 AGAIN, ALLEGATIONS IN THE COMPLAINT, CLASS DEFINITION,
18 METHODOLOGY TO CLOSE OUT PRODUCTION, HOW DO WE GET TO NECESSITY
19 FOR SOURCE CODE?

20 MR. MAO: YES.

21 SO YOUR HONOR, THE REASON WHY I ALSO STARTED OUT TALKING
22 ABOUT GOOGLE'S DOCUMENTATION IS BECAUSE I DO BELIEVE THAT WE
23 HAVE TARGETED PROCESSES IN WHICH WE SPECIFIED IN THE BRIEFS.
24 SO WE OBVIOUSLY DID NOT SAY ALL CODES, WE ENUMERATED CERTAIN
25 PROCESSES.

1 BUT AS YOU WILL SEE LOOKING AT GOOGLE'S OWN DOCUMENTATION,
2 THAT THEY ACTUALLY WANT TO ALLOW US TO INSPECT THAT SOURCE CODE
3 BECAUSE THEY CANNOT MOUNT THEIR DEFENSE.

4 THEY CANNOT HAVE IT BOTH WAYS. IF WE DO NOT CONDUCT AN
5 INVESTIGATION AS TO HOW THOSE USERS ARE IDENTIFIED AND ALSO HOW
6 MONEY IS MADE ON THOSE SAME USERS, THERE'S NO WAY FOR GOOGLE TO
7 ACTUALLY MOUNT A DEFENSE AS TO OUR ALLEGATIONS, SPECIFICALLY
8 BECAUSE IF YOU LOOK AT SOME OF THE SLIDES, WE ARE ABLE TO
9 DEMONSTRATE THAT THEY CAN IDENTIFY, AND THEY DO IDENTIFY USERS
10 IN INCOGNITO. AND SECONDLY, THEY MONETIZE OFF OF THOSE USERS.

11 I'M NOT SURE HOW GOOGLE IS GOING TO BE ABLE TO MOUNT A
12 DEFENSE IN RESPONSE, IF THEY CAN'T REBUT THAT EVIDENCE WITH
13 THINGS SUCH AS SOURCE CODE. OUR SOURCE CODE DOES NOT DO X, OR
14 OUR SOURCE CODE DOES NOT DO Y, BECAUSE SOURCE CODE DOES NOT
15 LIE. SOURCE CODE DOES EXACTLY WHAT IT DOES, IN TERMS OF WHAT
16 DATA IT POOLS, WHAT DATA IT GIVES TO PUBLISHERS AND ADVERTISERS
17 AND HOW IT ACTUALLY MONETIZES AND CHARGES USERS THAT USE THAT
18 DATA.

19 SO WE SPECIFIED [REDACTED] AND A COUPLE
20 OF THE PROCESSES, THAT WAS SLIDE 42. BUT THESE ARE ALL
21 PROCESSES, RIGHT, IN WHICH WE ARE SEEKING SOURCE CODE THAT IS
22 LITERALLY BASED OFF OF GOOGLE DOCUMENTATION. [REDACTED]

23 [REDACTED] THIS THING LITERALLY HAS NO BARRIERS IN
24 TERMS OF WHERE THE DATA CAN ACTUALLY BE PULLED.

25 WITH REGARD TO GOOGLE'S ALLEGATION THAT THEY DON'T JOIN,

1 AND I NOTE, YOUR HONOR, THAT SOME THEY DON'T JOIN, SOME THEY
2 COULD BE, BUT SETTING THAT ASIDE, THE FACT THAT THEY DO, UNDER
3 THIS SERVICE, WE BELIEVE IS SOMETHING WE CAN PROVE AND SHIFT
4 THE BURDEN TO GOOGLE IN TERMS OF DOCUMENTATION, AND THEN IT'S
5 INCUMBENT UPON GOOGLE TO PROVE THAT THEY DON'T DO THAT.

6 HOW ARE THEY GOING TO DO THAT IF THEY DON'T PRODUCE THE
7 SOURCE CODE, YOUR HONOR, BECAUSE THE ONE THING THAT SHOULD BE
8 UNDISPUTED, IN TERMS OF WHAT THE CODE DOES, IS BEING ABLE TO
9 INSPECT TO SEE IF IT DOES A, OR DOES NOT DO A, THE FACT IT DOES
10 B, OR DOES NOT DO B, HOW DO WE DO THAT WITHOUT THE SOURCE CODE?

11 ANOTHER THING IN WHICH WE SOUGHT IS LITERALLY CODE THAT
12 SHOWS ID LANGUAGE, RIGHT. AND WE PROVIDED SOME SLIDES ON THAT.
13 YOU CAN SEE EXACTLY WHAT WE SAID IS EXACTLY WHAT'S BEING DONE
14 WITHIN GOOGLE'S DOWN DOCUMENTATION, AND AGAIN, WE NEED SOURCE
15 CODE TO BE ABLE TO SHOW THAT.

16 AND IP ADDRESSES. I THINK MR. BRUSH AND MR. SCHMIDT AGREE
17 WITH US THAT IP ADDRESS IS A GOOD COMPLEMENT TO THE WAY IN
18 WHICH SEARCHES ARE DONE, AND WE SPECIFIED AND PROPOSED CERTAIN
19 EXAMPLES BY WHICH THEY CAN DO THAT AS WELL, AND THAT'S ONE OF
20 THE REASONS IN WHICH WE NEED SOURCE CODE.

21 THE COURT: THANK YOU, MR. MAO.

22 MR. MAO: THANK YOU.

23 MS. BONN: THANK YOU, YOUR HONOR.

24 AND I THINK WE WILL PASS THINGS OVER. I DID WANT TO MAKE
25 ONE ADDITIONAL COMMENT, WHICH IS THAT LOGS ARE BEING -- ARE NOT

1 BEING PRESERVED. EVERY LOG IS NOT BEING PRESERVED. THEY ARE
2 BEING DELETED UNDER GOOGLE'S RETENTION POLICIES. AND PART OF
3 WHY WE NEED SOURCE CODE IS THAT EVERY DAY, WEEK, MONTH THAT
4 GOES ON, DATA SOURCES THAT MAY HAVE ONCE EXISTED, MAY NO LONGER
5 EXIST. SO WE MAY BE IN A POSITION WHERE LOOKING TO LOGS ALONE,
6 WON'T TELL US WHAT WE NEED TO KNOW BECAUSE DATA FROM THE TIME
7 BEFORE THE COMPLAINT MAY NO LONGER BE THERE. BUT IF WE CAN SEE
8 GOOGLE'S SOURCE CODE, WE CAN NEVERTHELESS PROVE WHAT GOOGLE WAS
9 DOING AT THAT TIME, EVEN IF THE DATA THEY ACTUALLY COLLECTED IS
10 NO LONGER PRESENT.

11 SO I THINK THAT REALLY GOES TO THE NECESSITY POINT IN
12 ADDITION TO THE POINTS THAT MR. MAO MADE.

13 THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU, MS. BONN.

15 ALL RIGHT. SPECIAL MASTER BRUSH, I AM GOING TO TURN NOW
16 TO GOOGLE AND THEN I WILL RETURN TO YOU FOR ANY COMMENT OR
17 INPUT. BUT IF YOU WOULD LIKE TO COMMENT AT THIS JUNCTURE, YOU
18 ARE WELCOME TO.

19 MR. BRUSH: I HAVE NOTHING AT THIS TIME, YOUR HONOR.

20 THE COURT: OKAY. THANK YOU.

21 MR. SHAPIRO: THANK YOU, YOUR HONOR, AND SPECIAL
22 MASTER.

23 I JUST HAVE -- THERE'S A LOT TO UNPACK THERE, AND I HAVE
24 JUST A COUPLE OF OBSERVATIONS FROM 30,000 FEET, AND THEN MY
25 COLLEAGUE, MR. ANSORG, WILL DO THE ACTUAL UNPACKING.

1 THE COURT: OKAY. DID YOU WANT TO RESERVE TIME
2 TODAY, MR. SHAPIRO?

3 MR. SHAPIRO: YES, I THINK WE WANT TO RESERVE SIX
4 MINUTES. SIX MINUTES, PLEASE.

5 THE COURT: OKAY.

6 MR. SHAPIRO: AND I WILL BE COGNIZANT OF THE COURT
7 REPORTER AS I SPEAK.

8 YOUR HONOR, WE BELIEVE THAT THE SPECIAL MASTER PROCESS WAS
9 MORE THAN JUST A STARTING POINT HERE. WE AND THE SPECIAL
10 MASTER PUT IN MONTHS OF EFFORT, MANY HOURS OF MEET AND CONFERS,
11 BOTH WITH THE SPECIAL MASTER AND WITH OUR COLLEAGUES IN THE
12 BROWN CASE.

13 EVERY ARGUMENT THAT YOU'VE HEARD TODAY WAS ALSO MADE TO
14 THE SPECIAL MASTER, SOME OF THEM WERE MADE TO YOU AS WELL
15 EARLIER IN THIS PROCESS.

16 AND LISTENING TO THE PRESENTATION I HAVE JUST HEARD, I
17 FEEL AS IF WE ARE IN A BIT OF A TIME MACHINE HERE, IT'S AS IF
18 THAT HADN'T HAPPENED. WE HAVE TRIED, WITH OUR OBJECTIONS, TO
19 BE NARROWED AND TARGETED TO POINT OUT ONE OR TWO AREAS WHERE
20 THERE'S A BURDEN THAT WE THINK WAS UNANTICIPATED OR WAS NOT
21 NECESSARILY MADE CLEAR, THAT WE NEED TO CLARIFY, OR WHERE
22 SOMETHING SIMPLY MAY NOT BE FEASIBLE FOR REASONS THAT REQUIRE
23 FURTHER AIRING.

24 THE PLAINTIFFS IN THIS CASE SEEM TO WANT TO UNDUE MUCH OF
25 THE PROCESS AND ARE ASKING FOR SOMETHING MUCH MORE SWEEPING.

1 I NOTED THERE WAS A SLIDE THAT WAS PRESENTED IN THE
2 PRESENTATION YOU JUST SAW THAT SAID WE HAD PROVIDED ONLY [REDACTED]
3 SOURCES OF DATA. THAT'S A LOT OF SOURCES, AND THAT WAS IN A
4 PROCESS OVERSEEN BY A SPECIAL MASTER WHO HAS THE TECHNOLOGICAL
5 EXPERTISE TO UNDERSTAND WHAT IS REASONABLE IN A CASE LIKE THIS
6 AND WHAT IS NOT.

7 I WANT TO TAKE ISSUE WITH THE IDEA THAT SOMEHOW THE
8 SPECIAL MASTER DEFERRED TO OUR UNILATERAL CLAIMS ABOUT WHAT
9 THIS CASE INVOLVES. SPECIAL MASTER BRUSH IS NO SHRINKING
10 VIOLET, HE WAS PERFECTLY HAPPY TO TELL EITHER SIDE IF HE WASN'T
11 BUYING WHAT WE WERE SELLING. BUT HE GOT IT RIGHT, REGARDING
12 THE TECHNICAL FEASIBILITY AND THE BURDEN OF DIGGING INTO SOME
13 OF THESE AREAS LIKE [REDACTED], AND WHICH WOULD TURN THIS INTO AN
14 ENTIRELY DIFFERENT CASE.

15 SO LIKE I SAID, THERE'S LOTS TO UNPACK HERE. MR. ANSORG
16 WILL EXPLAIN POINT BY POINT WHY THE POINTS MADE BY THE
17 PLAINTIFFS ARE NOT WELL FOUNDED. BUT AS YOU SAID AT THE
18 BEGINNING, YOUR HONOR, THE GOAL SHOULD BE TO BRING THIS TO A
19 CLOSE, NOT TO START SOME ENTIRELY NEW CHAPTER OF DISCOVERY.

20 THE COURT: THANK YOU, MR. SHAPIRO.

21 MR. ANSORG: THANK YOU, YOUR HONOR.

22 WE WILL SEE IF WE CAN ALSO DO THE PRESENTATION, BUT
23 THERE'S A LOT OF EQUIPMENT.

24 THE COURT: THERE IS.

25 MR. ANSORG: IF YOU WILL BEAR WITH ME FOR ONE MOMENT

1 HERE.

2 THE COURT: CERTAINLY.

3 MR. SHAPIRO: I HOPE WE ARE NOT ON THE CLOCK WHEN WE
4 ARE SETTING UP.

5 THE COURT: YOU ARE NOT ON THE CLOCK.

6 MR. ANSORG: OKAY. WELL, I'VE GOT A BIT OF A
7 TECHNICAL PROBLEM, BUT I THINK I AM GOING TO CLOSE IT AND SPEAK
8 TO IT DIRECTLY, BECAUSE I'M REFERENCING THE SLIDES THAT YOU
9 HAVE. IT WILL BE MORE DIRECT.

10 WHAT I WANTED TO START OFF WITH WAS ACTUALLY ONE OF THE
11 SLIDES PLAINTIFFS HAD SHOWN US EARLIER. AND IN THE FIRST DECK
12 THEY HAD SENT US, IT'S THE THIRD SLIDE -- IN FACT, IT'S THE
13 FOURTH SLIDE, IT'S ENTITLED [REDACTED]

14 [REDACTED]
15 [REDACTED] AND YOUR HONOR, I BELIEVE THIS IS ONE OF THE
16 ISSUES THAT REALLY CUTS TO THE HEART OF THE PROBLEM THAT WE
17 HAVE AND IT'S SOMETHING WE DISCUSSED FREQUENTLY WITH THE
18 SPECIAL MASTER AND WITH PLAINTIFFS ON A NUMBER OF DIFFERENT
19 SETTINGS.

20 THE COURT: MR. ANSORG, LET ME JUST HAVE YOU SLOW
21 DOWN JUST A LITTLE BIT.

22 MR. ANSORG: YEAH.

23 AND THE CONTEXT FOR THIS DOCUMENT, YOUR HONOR, WHICH I
24 THINK IS SIGNIFICANT, IS THESE ARE [REDACTED]

25 [REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] AT NO POINT HAVE WE ARGUED THAT IT'S IMPOSSIBLE TO
JOIN DATA. BUT AT NO POINT HAVE PLAINTIFFS ALLEGED THAT IT'S
ONLY POSSIBLE OR IMPOSSIBLE TO JOIN THE DATA.

THE ALLEGATIONS THAT WERE BROUGHT IN THE COMPLAINT RELATED
TO GOOGLE FINGERPRINTING USERS. THE EVIDENCE HAS SHOWN THAT
GOOGLE DOES NOT FINGERPRINT USERS. IN FACT, PLAINTIFFS ARE NOW
ASKING US TO GO OUT AND FINGERPRINT THOSE USERS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AND

THAT'S AN ENTIRELY DIFFERENT MATTER, YOUR HONOR, THAN THE ONE
THAT WE ARE DEALING WITH TODAY.

SO THIS IS THE MAIN ISSUE I WANTED TO RAISE. IF WE GO
JUST TO OUR SLIDE DECK, AND THIS IS G2, AND I BELIEVE EVERYBODY
HAS THIS. AND MR. BRUSH, LET ME KNOW IF YOU DON'T HAVE IT AND
I WILL TRY AGAIN TO THROW UP THE SLIDE, BUT THE SECURITY
SETTINGS HAVE LOCKED IT DOWN, SO RIGHT NOW IT'S DIFFICULT.

MR. BRUSH: MR. ANSORG, BY ALL MEANS, IF YOU ARE
REFERENCING EITHER PLAINTIFF'S OR YOUR DECK, JUST CALL OUT THE
SLIDES, I HAVE BOTH OF THEM IN FRONT OF ME RIGHT NOW.

MR. ANSORG: OKAY. THANK YOU, MR. BRUSH.

1 SO G2, TAKING A STEP BACK, AND THIS IS WHAT MR. SHAPIRO
2 REFERENCED, WE HAD EXTENSIVE DISCOVERY IN THIS CASE,
3 YOUR HONOR, NOT JUST THROUGH THE SPECIAL MASTER PROCESS, WHICH
4 HAS COME AT THE END OF THIS, BUT WE ARE AT 14 MONTHS, MORE THAN
5 200 RFP'S, THERE'S MILLIONS OF PAGES THAT HAVE BEEN PRODUCED,
6 THERE'S A REASON WHY PLAINTIFFS ASK ABOUT A LOT OF DIFFERENT
7 CODE WORDS, KEY WORDS, PROJECTS AT GOOGLE, BECAUSE THERE'S BEEN
8 EXTENSIVE -- A HUGE AMOUNT OF DISCOVERY IN THIS CASE.

9 THE SPECIAL MASTERS CORRECTLY HELD THAT SOURCE CODE AND
10 CLEAN ROOM ACCESS ARE NOT WARRANTED IN THIS CASE AND THAT
11 SAMPLES OF ENTRIES WITHOUT THE X CLIENT DATA HEADER SHOULD ALSO
12 NOT BE PRODUCED. MOREOVER, HE STATED SOMETHING THAT IS WIDELY
13 KNOWN IN THE INDUSTRY, THAT IP ADDRESSES ARE JUST NOT RELIABLE
14 INDICATORS FOR INDIVIDUALS.

15 THE COURT: IP ADDRESSES BY THEMSELVES.

16 MR. ANSORG: THAT'S RIGHT, YOUR HONOR.

17 SO MS. BONN, EARLIER, REFERENCED LEGAL ARGUMENTS THAT WE
18 HAD MADE TO NARROW THE DATA AT ISSUE. AND I WANTED TO TAKE
19 SLIGHT EXCEPTION WITH THAT, YOUR HONOR. AND THAT'S JUST THAT
20 THESE AREN'T JUST LEGAL ARGUMENTS, THEY ALSO RELATE TO THE
21 ACTUAL DATA ARCHITECTURE. AUTHENTICATED DATA IS KEPT SEPARATED
22 FROM THE UNAUTHENTICATED DATA. THAT'S A DIFFERENT LOGIN
23 STRUCTURE.

24 I NOTED SOMETHING WE DISCUSSED WITH YOU PREVIOUSLY, BUT IN
25 THIS CASE WE ARE DEALING WITH A VERY SPECIFIC CLASS, AND A

1 CLASS DEFINITION THAT'S TIED TO BROWSER INFORMATION IN PRIVATE
2 BROWSING MODE, AND USER ACTIONS THAT ARE DEFINED IN THE CLASS
3 AS YOU VISIT A WEBSITE THAT HAS GOOGLE ANALYTICS, OR YOU VISIT
4 A WEBSITE THAT HAS GOOGLE AD MANAGER, AND MOST IMPORTANTLY,
5 YOUR HONOR, YOU DID NOT LOG INTO YOUR GOOGLE ACCOUNT. AND
6 THERE'S BEEN A LOT OF BACK AND FORTH ON THAT ISSUE, AND I THINK
7 ON JUNE 2ND, MR. MAO TOLD YOU THAT INCOGNITO, BY DEFINITION, IS
8 A LOGGED OUT STATE.

9 SO HE'S TAKEN THOSE TO HEART WHEN WE ARE GOING OUT AND
10 TRYING TO FIGURE OUT WHAT IS THE RELEVANT INFORMATION THAT CAN
11 BE LINKED AND TIED TO SOMETHING. THE STARTING POSITION HERE IS
12 ONE IN WHICH WE ARE FOCUSED ON SOMETHING EXTREMELY NARROW AND
13 TARGETED, BUT AT THE SAME TIME, IT'S STILL EXPANSIVE BECAUSE
14 THERE'S A LOT OF DIFFERENT GOOGLE SERVICES THAT DRAW ON THE
15 DATA.

16 ONE OF THE TOPICS WE WANTED TO TOUCH ON IS JUST THE BURDEN
17 THAT'S ACTUALLY ASSOCIATED WITH GOING OUT AND IDENTIFYING THE
18 [REDACTED] DIFFERENT SOURCES, RUNNING THE SEARCHES, PROVIDING THE FIELD
19 INFORMATION. AND IT MAY APPEAR AS IF GOOGLE SIMPLY HAS ONE BIG
20 DATA LAKE WHERE YOU CAN PUSH A BUTTON AND SOMETHING WOULD BE
21 PRODUCED, BUT BECAUSE OF THE NATURE OF DIFFERENT PRODUCTS,
22 THAT'S SIMPLY NOT THE CASE.

23 IN ANY GIVEN INSTANCE, IF WE ARE WORKING WITH A PRODUCT,
24 WE ARE WORKING WITH A TEAM OF ENGINEERS, THEY HAVE
25 SPECIALIZATIONS FOR EACH ONE TO IDENTIFY THE [REDACTED] SOURCES. WE

1 ARE WORKING WITH A NUMBER OF ENGINEERS OVER A NUMBER OF DAYS,
2 AND THEN THAT INFORMATION HAS TO BE VERIFIED AS WE MOVE
3 FORWARD. THE SAME IS TRUE FOR THE [REDACTED] DATA SOURCES THAT WE
4 IDENTIFIED FOR CALHOUN.

5 THE FIELD DESCRIPTIONS COMPILATIONS IS ONE THAT'S ALSO
6 ASSOCIATED WITH SIGNIFICANT BURDEN. AND HERE, WE UNDERSTAND IT
7 MAY APPEAR IF THERE'S ALWAYS A FIELD, THERE SHOULD BE A FIELD
8 DESCRIPTION. BUT BY VIRTUE OF HOW THE SYSTEM IS ORGANIZED WITH
9 THE PROTO'S, A LOT OF DIFFERENT LOGS WILL DRAW ON THE SAME
10 PROTO. THE FIELD NAME WOULD REMAIN THE SAME, BUT THE USES IN
11 THE FIELD DESCRIPTIONS UNDER EACH LOG WOULD BE DYNAMIC.

12 SO YOU ACTUALLY HAVE TO SIT DOWN AND WORK WITH ENGINEERS.
13 AND FOR THE SOURCES THAT WE PROVIDED, WE AGAIN HAD TO SIT DOWN,
14 ENGINEERS HAD TO HAND-CODE INFORMATION, WE HAD TO PULL AND
15 PROVIDE THAT.

16 FINALLY, RUNNING THE SEARCHES ACROSS THE DATA SOURCES ALSO
17 HAS VERY SPECIFIC BURDENS ASSOCIATED WITH THEM. THE MOST
18 SIGNIFICANT ONE IS THAT THERE'S A MATERIAL DIFFERENCE BETWEEN
19 SEARCHING ANY DATA THAT'S OLDER THAN [REDACTED] DAYS, OR DATA THAT'S
20 YOUNGER THAN [REDACTED] DAYS.

21 DATA THAT'S OLDER THAN [REDACTED] DAYS REQUIRES CONSTRUCTION ON
22 AN ENTIRELY DIFFERENT PIPELINE, DIFFERENT PROMPTS, YOU
23 BASICALLY HAVE TO WRITE A DIFFERENT SCRIPT.

24 DATA THAT'S YOUNGER, THAT CAN BE SEARCHED BY THE DREMEL.
25 THE DREMEL TOOL, AS PLAINTIFFS REFERENCED EARLIER, IS SOMETHING

1 THAT'S USED TO SEARCH LOGS, IT'S NOT USED TO SEARCH THE KEY
2 VALUE STORAGE INFORMATION WHICH THEY HAVE BEEN REFERRING TO.

3 SO WHEN WE ACTUALLY LOOK AT THE DATA FLOW THAT'S AT ISSUE,
4 YOUR HONOR, AND THIS IS DIRECTLY RELEVANT TO WHY THE SOURCES
5 HAVE BEEN SELECTED, IT'S ONE IN WHICH A [REDACTED] ID IS SET IN A
6 COOKIE, AND THAT'S THE ID COOKIE. WHEN YOU GO INTO PRIVATE
7 BROWSING MODE -- AND HERE I WOULD ASK YOU TO JUST JUMP AHEAD TO
8 G11 -- WHEN YOU GO INTO PRIVATE BROWSING MODE, COOKIES WILL BE
9 SET WHEN YOU VISIT A CERTAIN SITE. YOU LEAVE PRIVATE BROWSING
10 MODE, THE COOKIES ARE DELETED. YOU GO BACK IN NEW PRIVATE
11 BROWSING MODE, YOU VISIT THE EXACT SAME WEBSITE FIVE MINUTES
12 LATER, NEW [REDACTED] ID IS SET WITHIN A NEW COOKIE, AND IT'S
13 REPEATED AGAIN, AND AGAIN, AND AGAIN.

14 AND THE REASON WHY WE HAVE THIS HERE, AND THIS IS
15 SOMETHING WE DEVELOPED IN COMMUNICATION WITH THE BROWN
16 PLAINTIFFS IN RESPONSE TO THE SPECIAL MASTER'S REQUEST, IS THAT
17 IT BEARS DIRECTLY ON THE DATA THAT'S RELEVANT.

18 THE PROBLEM WE HAVE HAD IN THIS CASE, YOUR HONOR, IS THAT
19 PLAINTIFFS FAILED TO PRESERVE THEIR RELEVANT IDENTIFIERS, AND
20 THEREFORE WE HAVE HAD TO ASK THEM TO GO AND RUN THE NEW
21 [REDACTED] ID'S FOR US TO BE ABLE TO PRODUCE THE RELEVANT
22 AUTHENTICATED DATA.

23 THEY DID THAT, WE PRODUCED THAT INFORMATION, WE ARE STILL
24 IN THE PROCESS OF PRODUCING INFORMATION FOR THE UM ID'S WHICH
25 THEY HAVE ALSO ASKED US TO DO. SO THE NOTION THAT WE HAVE NOT

1 PRODUCED UNAUTHENTICATED DATA IS SIMPLY INCORRECT, YOUR HONOR.

2 I WANT TO GO BACK TO TWO OTHER POINTS HERE ON G9, G10, AND
3 THEN WE ARE GOING TO SKIP AHEAD AND RESERVE THE BALANCE OF OUR
4 TIME.

5 PLAINTIFFS HAVE BEEN REFERENCING DEVICE ID'S. WE HAVE HAD
6 A LOT OF CONVERSATIONS ABOUT THOSE, YOUR HONOR, WITH THE
7 SPECIAL MASTER AND WITH PLAINTIFFS, THEY ARE CALLED AD ID'S
8 IDFA'S, THEY ARE USED FOR APP BROWSING MODES, THEY ARE NOT USED
9 FOR THE DATA FLOW IN THIS CASE. THEY'RE NOT USED FOR BROWSER
10 COMMUNICATIONS. WE DON'T BELIEVE WE SHOULD HAVE TO SEARCH FOR
11 THOSE BECAUSE WE ARE GUARANTEED TO PULL INFORMATION THAT'S NOT
12 RELEVANT. IT MAY BE RELEVANT TO A DIFFERENT CASE THAT OPPOSING
13 COUNSEL IS ALSO SUING GOOGLE FOR, BUT IT'S NOT RELEVANT TO THE
14 ONE BEFORE US.

15 FINALLY, THE PPID'S, AND HERE I THINK THERE'S A
16 SIGNIFICANT MISUNDERSTANDING, AND IT MADE SENSE TO ME MUCH MORE
17 WHEN MR. MAO WAS PRESENTING JUST NOW, PLAINTIFFS APPEAR TO
18 BELIEVE THE PPID IS SOMEHOW MAPPED TO THE SAME ID THAT WOULD BE
19 SET TO A [REDACTED] COOKIE, AND THAT'S SIMPLY NOT THE CASE.

20 WHAT HAPPENS IS A PPID IS GENERATED, WHICH IS A PUBLISHER
21 PROVIDED IDENTIFIER. YOU RECEIVE IT FROM THE *NEW YORK TIMES*.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SO IF PLAINTIFFS NEEDED, YOUR HONOR, AND WHAT THEY HAVE BEEN LOOKING FOR, IS SOME KIND OF REPLACEMENT FOR X CLIENT DATA HEADER, SOMETHING THAT WOULD JOIN ALL THESE SEPARATE SESSIONS THAT WE WERE TALKING ABOUT EARLIER, AND THE PPID DOES NOT DO THAT, IT DOES NOT EXIST.

SO THE SPECIAL MASTER CORRECTLY HELD THAT IP ADDRESS, ON ITS OWN, AS YOU SAID YOUR HONOR, CANNOT BE USED TO RELIABLY IDENTIFY A PERSON.

ONE OF THE OTHER ASPECTS THAT OPPOSING COUNSEL HAS RAISED WHICH I WOULD LIKE TO FOCUS ON, AND THIS IS AT SLIDE G12, IF YOU WOULD TURN TO THAT, THEY ARE REFERENCING DIFFERENT PROGRAMS, AND THEY ARE CALLED [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

AND HERE I'M PROVIDING A SNAPSHOT OF A PARTICULAR DOCUMENT THAT PLAINTIFFS SHOWED, AND INCLUDED WITHIN THEIR MATERIALS, AND THE KEY HERE AT THE TOP IF YOU LOOK AT IT IS THE BASIC ID,

1 [REDACTED] ID, GAIA ID, [REDACTED] ID, AND THE POINT HERE,
2 YOUR HONOR, IS THAT FOR THIS TO WORK, YOU NEED BOTH OF THE ID'S
3 IN THE SAME COOKIE JAR AT THE SAME TIME. THAT ONLY HAPPENS
4 WHEN A USER IS LOGGED IN TO THEIR GOOGLE ACCOUNT.

5 AND IN THIS CASE, PLAINTIFFS HAVE NOT ALLEGED THAT THEY
6 ARE NOT LOGGED INTO THEIR GOOGLE ACCOUNT IN PRIVATE BROWSING
7 MODE. THERE IS NO SCENARIO UNDER THE CLASS DEFINITION IN WHICH
8 THE GAIA ID AND THE [REDACTED] ID ARE IN THE COOKIE JAR AT THE
9 SAME TIME, AND FOR THAT REASON, THE [REDACTED]
10 ARE NOT RELEVANT OR AT ISSUE HERE AND SHOULD NOT BE BECAUSE WE
11 ARE ALSO KEEN ON MOVING THIS PROCESS FORWARD AND FINDING SOME
12 RESOLUTION AFTER THE 14 MONTHS.

13 SO IF YOU GO BACK, AND THIS IS NOW TO G14, AND THIS IS THE
14 POINT I WAS JUST RAISING WHICH NOW MAKES SENSE TO ME,
15 YOUR HONOR, AND WE HAVE HAD A LOT OF MEET AND CONFERS WITH
16 OPPOSING COUNSEL, AND SO MUCH SO THAT I BELIEVE MR. MAO AND I
17 KNOW EACH OTHER VERY WELL, AND THERE'S DAYS I SPEAK TO HIM MORE
18 THAN TO MY FAMILY, WHO I LIVE WITH.

19 IF YOU SEE THAT DIAGRAM BEFORE YOU, YOUR HONOR, [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED].

25 THAT'S A SERVICE THAT GOOGLE PROVIDES FOR PUBLISHERS, THE

1 NEW YORK TIMES PROVIDES INFORMATION, AND ONE OF THE
2 REQUIREMENTS FOR THE NEW YORK TIMES TO SEND THE PPID TO GOOGLE
3 IS FOR THERE TO BE NO PERSONAL IDENTIFYING INFORMATION IN IT.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 THE COURT: MR. ANSORG, WHAT YOU WERE JUST POINTING
9 TO, I SEE THE PPID CHAIN ON THE FAR RIGHT, AND THEN TO THE
10 RIGHT, THE MIDDLE, IS THE [REDACTED] COOKIE REFERENCE?

11 MR. ANSORG: YES. THAT'S RIGHT, YOUR HONOR.

12 THE COURT: IS THAT WHAT YOU WERE SAYING?

13 MR. ANSORG: YES. WHAT I'M SAYING IS, AND I NOW
14 UNDERSTAND WHY MS. BONN WAS REFERRING TO THE PPID, THE
15 [REDACTED], AS WELL AS MR. MAO, AND THERE SEEMS TO BE A
16 MISUNDERSTANDING THAT THE PPID IS USED TO GENERATE THE [REDACTED]
17 ID THAT'S THE SAME OR THAT'S TIED TO THE ONE IN THE COOKIE.
18 BUT IT ACTUALLY HAS NOTHING TO DO WITH THAT, IT'S NOT USED FOR
19 ANY OF THOSE PURPOSES.

20 SO I THINK THIS IS A FUNCTION OF THERE'S A LARGE
21 ORGANIZATION WITH A LOT OF PEOPLE WORKING ON DIFFERENT THINGS,
22 AND YOU WILL OCCASIONALLY HAVE A SEMANTIC CLASH WHERE A TERM
23 COULD BE USED TO DESCRIBE A PROCESS AS WELL AS AN ACTUAL
24 OBJECT.

25 AND HERE THE PPID MAP [REDACTED] HAS NOTHING TO DO WITH THE

1 [REDACTED] THAT WE HAVE BEEN DISCUSSING PREVIOUSLY THAT'S RELATED
2 TO OUR ISSUES.

3 AND WITH THAT, YOUR HONOR, UNLESS YOU HAVE ANY FURTHER
4 QUESTIONS, I WOULD LIKE TO KEEP THE BALANCE OF TIME.

5 I'M SORRY ABOUT THE PRESENTATION NOT WORKING.

6 THE COURT: NOT A PROBLEM, YOU ARE NOT ALONE IN THAT
7 REGARD TODAY, MR. ANSORG.

8 ALL RIGHT. BEFORE I BRING PLAINTIFFS BACK, SPECIAL MASTER
9 BRUSH, FURTHER COMMENT? GOOGLE'S COMMENTS SEEM TO BE DIRECTED
10 OR IN RESPONSE TO PLAINTIFF'S OBJECTIONS, WITH SOME TRACKING OF
11 THEIR OBJECTIONS. QUESTIONS OR CONCERNS AT THIS JUNCTURE?

12 MR. BRUSH: YEAH.

13 JUST MAYBE, AGAIN, WE HAD DISCUSSED THIS QUITE A FEW TIMES
14 WITH GOOGLE COUNSEL.

15 GOING BACK TO G5 WITH THE FIELD DESCRIPTION, AND AGAIN,
16 JUST TO CLARIFY MY MACRO UNDERSTANDING OF HOW THIS DATA IS
17 COMPILED, MR. ANSORG, IS THAT IT'S -- THIS IS A GENERAL
18 STRUCTURE OF A DATABASE THAT'S GOING TO -- IS THERE A DATABASE
19 SCHEMA THAT DOES POINT AS KIND OF AN INDEX TO FIELD DEFINITIONS
20 THAT COULD BE USED AS OPPOSED TO GOING TO EACH INDIVIDUAL TABLE
21 AND EXTRACTING THE DEFINITION?

22 MR. ANSORG: YES. THANK YOU FOR THAT QUESTION,
23 SPECIAL MASTER BRUSH.

24 SO THE WAY THE FILES ARE ENCODED IS WE COULD THINK OF THE
25 PROTOCOL BUFFERS AS SORT OF SEPARATE SOURCE CODE THAT A LOT OF

1 THE DIFFERENT LOGS WILL DRAW ON.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] AND WE HAVE DONE SO AND

25 PROVIDED, I THINK, MORE THAN [REDACTED] FIELD AND FIELD DESCRIPTIONS

1 FOR THE BROWN PLAINTIFFS.

2 ONE OF OUR CONCERNS, IN GENERAL, IS THAT THE FOCUS ON
3 FIELD AND FIELD DESCRIPTIONS, AS WE PROCEED, ISN'T AS HELPFUL
4 IN LANDING US AT A CLOSING LINE, BECAUSE THE MEET AND CONFERS
5 TOOK ON THE VALENCE IN WHICH WE WOULD BE ASKED, WELL, WHAT DOES
6 THIS PARTICULAR FIELD MEAN WHAT DOES IT MEAN WHEN YOU HAVE THIS
7 DESCRIPTION? AND FRANKLY, THAT'S NOT SOMETHING THE ATTORNEYS
8 ARE CAPABLE OF RESPONDING TO. EACH QUERY IS ONE WHERE WE WOULD
9 HAVE TO GO OUT AND WORK WITH THE ENGINEERS AND GENERATE FURTHER
10 RESPONSES.

11 SO AS AN INTELLECTUAL EXERCISE, IT'S SEEN TO SLOW THINGS
12 DOWN, AND THERE'S ONE WHERE THE BURDEN FOR SOURCES WHERE
13 THERE'S MORE THAN [REDACTED] FIELDS, WAS OVERWHELMING. IT'S WHERE
14 WE WOULD BE WORKING WITH MULTIPLE ENGINEERS FOR MULTIPLE DAYS
15 TO SIT AND COMPILE SOMETHING THAT OPPOSING COUNSEL WOULD BE
16 ABLE TO UNDERSTAND.

17 MR. BRUSH: GOT YOU.

18 SO AS FAR AS YOU CAN POSIT MY POSSIBLE SENSE OF CONFLATING
19 THE LOG ISSUES WITH THE DATA RATE. BUT IT SOUNDS LIKE THE LOGS
20 ARE -- THEY ARE NOT IN ANY KIND OF STRUCTURED DATABASE FORMAT,
21 IS WHAT I'M HEARING.

22 SO LET ME ASK, WHERE DOES THE STUFF GET WRITTEN TO DISK?
23 IF IT'S COMING FROM PROTOCOL BUFFER DOWN TO STORAGE AREA, WHERE
24 DOES IT GO?

25 MR. ANSORG: [REDACTED]

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MR. BRUSH: RIGHT.

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MR. ANSORG: THAT'S THE [REDACTED] KEY VALUE DATABASE.

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FOR THOSE, OF COURSE IT WAS MUCH EASIER FOR US TO PROVIDE THE

13

FIELD AND FIELD DESCRIPTIONS, SIR, AND THOSE ARE THE ONES WE

14

DID PROVIDE. BUT FOR THE [REDACTED]

15

[REDACTED].

16

MR. BRUSH: I UNDERSTAND.

17

THE COURT: DOES THAT ANSWER YOUR QUESTION, SPECIAL

18

MASTER BRUSH, ABOUT WHERE IS IT WRITTEN, WHERE DOES IT GO?

19

MR. BRUSH: IT DOES, YEAH.

20

THE COURT: ALL RIGHT.

21

MR. BRUSH: I HAVE A BETTER UNDERSTANDING.

22

THANK YOU.

23

THE COURT: OTHER QUESTIONS FROM GOOGLE'S

24

PRESENTATION AT THIS TIME? FROM EITHER YOU OR MR. SCHMIDT?

25

MR. BRUSH: NO, NOTHING FROM US.

1 THANK YOU, YOUR HONOR.

2 MR. MAO: SORRY, YOUR HONOR, MAY I JUST ADDRESS THE
3 POINTS WHICH WERE MADE IN RESPONSE TO MR. BRUSH? IT WILL
4 LITERALLY TAKE ME A MINUTE.

5 THE COURT: BRIEFLY.

6 MR. MAO WOULD BE LIKE TO HEARD IN RESPONSE TO MR. ANSORG'S
7 COMMENT. MR. MAO.

8 MR. MAO: SORRY, MR. BRUSH, IT'S KIND OF HARD TO
9 ORIENT MY EYES BECAUSE IT'S LIKE YOU ARE THERE AND YOU ARE
10 HERE. I APOLOGIZE.

11 SO MR. BRUSH, I DO THINK THAT -- SO ONE OF THE REASONS WHY
12 WE ARE DISCUSSING MORE THAN [REDACTED] SOURCES IS BECAUSE WE CAN POINT
13 TO SEVERAL TABLES. FOR EXAMPLE, THERE'S A PUBLISHER PROVIDED
14 ID TABLE THAT STORES THE MAP [REDACTED] -- SORRY, PPID MAPPED TO
15 [REDACTED].

16 THE COURT: SLOW DOWN JUST A LITTLE BIT, MR. MAO,
17 BECAUSE THE COURT REPORTER.

18 MR. MAO: SORRY.

19 THERE'S A TABLE CALLED "PUBLISHER PROVIDED ID'S" THAT SITS
20 BETWEEN [REDACTED] AND THE [REDACTED]
21 [REDACTED] IN WHICH WE HAVE BEEN TRYING TO MEET AND CONFER. AND
22 THEN ONE OF THE OTHER SOURCES IN WHICH MR. ANSORG AND I HAVE
23 BEEN ARGUING ABOUT SINCE FEBRUARY, IS SOMETHING CALLED [REDACTED]
24 [REDACTED], WHICH IS LITERALLY A RAW LOG AS TO WHERE ALL THE
25 DATA CONVERGES FOR [REDACTED] AND ALSO IP ADDRESSES.

1 AND SO TAKING THE ISSUE WITH THE [REDACTED] SOURCES, BECAUSE WE
2 UNDERSTOOD THAT WAS THE BEGINNING, BUT WE WERE GOING TO GET TO
3 THAT, SO WE WANTED TO MAKE SURE WE WERE TALKING ABOUT [REDACTED]
4 SOURCES, WE ARE NOT SAYING THE FULL UNIVERSE IS GOING TO BE
5 LIMITED TO THIS BECAUSE WE HAVE NOT BEEN ABLE TO SHOW THE
6 GOOGLE DOCUMENTATION. AND THAT IS WHY WE BELIEVE CLOSURE ON
7 THIS ISSUE IS TOO EARLY AND PREMATURE.

8 I BELIEVE THE QUESTIONS YOU ASKED, CLEARLY SHOW, AND YOU
9 CAN SEE AS WELL, SPECIAL MASTER BRUSH, THAT MULTIPLE PROCESSES
10 ARE TAPPING INTO THESE TABLES. CERTAINLY THERE MUST BE LOG
11 SOURCES AND TABLES THAT ARE COMPILED IN THE MIDDLE WHICH HAVE
12 NOT BEEN IDENTIFIED JUST YET.

13 THAT'S IT. THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 QUESTIONS FOR MR. MAO, MR. BRUSH?

16 MR. MAO: OH, SORRY.

17 MR. BRUSH: YES.

18 YOU SAID, MR. MAO, THAT THEY SUSPECT MUST BE OR DO YOU
19 HAVE EVIDENCE THAT THERE IS?

20 MR. MAO: THERE IS.

21 WE CAN POINT TO THOSE SPECIFIC TABLES AND LOG SOURCES
22 USING GOOGLE DOCUMENTATION, IT'S JUST, YOU KNOW, WE REALIZE
23 THAT YOU HAD A VERY DIFFICULT JOB THAT NEEDED TO BE DONE VERY
24 QUICKLY AND WE WERE TRYING TO KEEP TO THE TASK AND STICK TO THE
25 PROCEDURE REQUIREMENTS.

1 THANK YOU.

2 MR. BRUSH: UNDERSTOOD. THANK YOU.

3 THE COURT: THANK YOU, MR. MAO.

4 MS. BONN: AND IF I COULD, YOUR HONOR, I WOULD LIKE
5 JUST A ONE MINUTE REBUTTAL.

6 THE COURT: ONE MOMENT, MS. BONN, LET ME JUST MAKE A
7 NOTE.

8 ALL RIGHT. YOU HAD RESERVED SOME TIME.

9 MS. BONN: THANK YOU, YOUR HONOR.

10 I REALIZE WE MAYBE USED MORE THAN I INTENDED, SO I WILL
11 TRY TO KEEP IT BRIEF.

12 I JUST WANTED TO ADDRESS A COUPLE OF KEY POINTS.

13 NUMBER ONE, WE DIDN'T REALLY HEAR ANYTHING WHATSOEVER
14 ABOUT WHY LOG ENTRIES AND DATA SOURCES THAT SHOW AN ABSENCE OF
15 AN X CLIENT DATA HEADER SHOULD SOMEHOW BE OUT OF PLAY. AND IN
16 FACT, THE DOCUMENT WE SUBMITTED AS EXHIBIT B, [REDACTED]

17 [REDACTED]
18 [REDACTED]. SO THAT'S POINT ONE.

19 POINT TWO IS MR. ANSORG SAID PLAINTIFFS HAVEN'T PRESERVED
20 CERTAIN IDENTIFIERS AND THAT'S WHY WE CAN'T LOOK THIS UP. AND
21 THIS IS THE PROBLEM WE HAVE BEEN HAVING FROM DAY ONE, BECAUSE

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]
[REDACTED].

GOOGLE SAYS NO, WE ARE NOT GOING TO DO THAT, INSTEAD
PLAINTIFFS, WHY DON'T YOU TELL US WHAT YOUR IDENTIFIERS ARE,
AND THEN IF YOU CAN TELL US WHAT YOUR IDENTIFIERS ARE, THEN WE
WILL LOOK IT UP.

AND THIS HAS THE PROCESS JUST COMPLETELY BACKWARD. AND
THIS IS REALLY THE PROBLEM THAT WE ARE FACING.

POINT THREE, GOOGLE SAID, AND THEY HAVE BEEN SAYING IN
THEIR BRIEFS AND IN THEIR PAPERS, IN OUR ORDINARY COURSE OF
BUSINESS, OKAY, WE DON'T JOIN DATA SOURCE A AND DATA SOURCE B.

FROM MY PERSPECTIVE, NUMBER ONE, WE ARE LAWYERS
REPRESENTING A PUTATIVE CLASS AND WE ARE ALLOWED TO USE DATA
THAT GOOGLE HAS IN ORDER TO IDENTIFY CLASS MEMBERS. THE FACT
THAT GOOGLE SAYS, WELL, WE DON'T DO THAT IN OUR ORDINARY COURSE
OF BUSINESS, IS BESIDE THE POINT.

WE ARE IN DISCOVERY IN LITIGATION, WE HAVE, FRANKLY, AN
OBLIGATION TO TRY TO SEE WHAT WE CAN DO TO DO THAT. SO GOOGLE
SAYING IN OUR ORDINARY COURSE OF BUSINESS, WE DON'T TO THIS, I
DON'T SEE WHY THAT MEANS THAT CLASS LAWYERS CAN'T USE THE DATA
IN ORDER TO TRY TO IDENTIFY CLASS MEMBERS.

FINALLY, GOOGLE SAYS THINGS LIKE, WE DON'T JOIN THIS DATA
WITH THAT DATA. AND I THINK THAT THAT'S A LITTLE BIT OF AN
INCOMPLETE PICTURE, BECAUSE WHAT WE FIND IS THAT GOOGLE LINKS
IDENTIFIERS AND MAPS IDENTIFIERS FROM THESE DIFFERENT SOURCES.

1 AND BY THAT LINKING AND BY THAT MAPPING, WE CAN THEN TRY TO
2 IDENTIFY CLASS MEMBERS.

3 AND I'M JUST GOING TO SHARE A SLIDE THAT I THINK SORT OF
4 ILLUSTRATES THIS ISSUE. GOOGLE HAS SOMETHING CALLED A [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 THE COURT: IS THAT IN THE SLIDE DECK, MS. BONN?

18 MS. BONN: YES, YOUR HONOR. I BELIEVE IT'S TOWARD
19 THE END, 46, 47, 48.

20 SO, YOU KNOW, AND JUST TO BRING US BACK TO THE ISSUE, WE
21 HAVE SPENT MONTHS HAVING THESE DISCUSSIONS WITH MR. ANSORG AND
22 OTHERS, WHERE IT'S THIS IS NOT HOW THAT WORKS, THIS ISN'T
23 JOINED WITH THIS, YOU CAN'T DO THIS WITH THAT. AND REALLY
24 WHERE WE ARE, IS WE ARE SORT OF LEFT IN THE DARK.

25 AND I THINK YOUR HONOR CAN TELL WITH THIS DISCUSSION THAT

1 JUST HAPPENED WITH THE SPECIAL MASTERS, THESE ARE COMPLEX
2 SYSTEMS, SOME OF THEM, INCLUDING [REDACTED], DO HAVE A LARGE
3 NUMBER OF FIELDS, AND FRANKLY, I THINK THE EASIEST WAY TO CUT
4 THROUGH SOME OF THIS AND GET TO A POINT WHERE WE CAN UNDERSTAND
5 HOW THE SYSTEMS WORK SO THAT WE CAN FORMULATE NARROW, TARGETED
6 SPECIFIC QUERIES, IS TO ALLOW OUR EXPERT TO INSPECT THE [REDACTED]
7 TOOL, TO INSPECT THE DREMEL TOOL, UNDER SUPERVISION BY THE
8 SPECIAL MASTER AND GOOGLE, RUNNING SEARCHES OR QUERIES THAT CAN
9 BE LINKED TO OUR PLAINTIFFS OR THEIR DEVICES.

10 SO USING THINGS LIKE THEIR IP ADDRESS, THEIR USER AGENT
11 STRING OR OTHER IDENTIFIERS. THAT IS GOING TO GIVE US SO MUCH
12 MORE INSIGHT INTO HOW THESE SYSTEMS WORK AT GOOGLE, HOW THESE
13 FIELDS CAN BE JOINED, MAYBE HOW THEY CAN'T, SO THAT KEY CAN
14 THEN FORMULATE AN INTELLIGENT QUERY.

15 BUT TO TRY TO DO THAT, LARGELY IN THE DARK, THROUGH A
16 PROCESS IN WHICH GOOGLE SAYS, WELL INSTEAD OF JUST LETTING YOU
17 SEE THE TOOL AND TEST THE TOOL AND INSPECT THE TOOL AND THEN
18 COME BACK WITH A QUERY, WE ARE GOING TO HAVE A PROCESS WHERE WE
19 DESCRIBE SOME FIELDS BUT WE CAN'T GET YOU ALL OF THEM, THAT'S
20 WHAT'S CREATING A LOG JAM.

21 AND YOU KNOW, I UNDERSTAND THAT THINGS, LIKE SOURCE CODE
22 AND TOOLS, ARE SENSITIVE. I THINK THE COURT HAS BEEN VERY
23 CAUTIOUS, PROBABLY RIGHTLY SO, IN TRYING TO GET THERE, BUT I
24 THINK AT THIS POINT, THERE IS A PROCESS WE CAN PUT IN PLACE
25 THAT WILL ALLOW OUR EXPERTS TO INSPECT WHAT THEY NEED TO

1 INSPECT UNDER SUPERVISION, MAKING SURE IT'S NOT ABUSIVE, AND
2 THAT'S GOING TO HELP INFORM NOT ONLY US, BUT GOOGLE, THE
3 SPECIAL MASTER, AND THE COURT, SO THAT WE CAN ACTUALLY MAKE
4 TARGETED SEARCH REQUESTS FOR THE DATA WE NEED IN A WAY THAT'S
5 NOT BURDENSOME, THAT GETS US TO THAT FINISH LINE. AND THAT IS
6 REALLY WHAT WE ARE ASKING FOR, YOUR HONOR.

7 THANK YOU.

8 THE COURT: ALL RIGHT. THANK YOU, MS. BONN.

9 YOU HAD IDENTIFIED YOUR FIRST COMMENT WAS ON THE X CLIENT,
10 X DATA HEADER, AND THE THIRD WE GOT DOWN INTO WHAT WAS AND
11 WASN'T JOINED. WHAT WAS YOUR SECOND?

12 MS. BONN: MY SECOND POINT WAS THAT MR. ANSORG SAID
13 AT ONE POINT, PART OF WHY WE CAN'T SEARCH CERTAIN DATA, IS THAT
14 THE PLAINTIFFS HAVEN'T PRESERVED THEIR IDENTIFIERS.

15 THE COURT: OH, THAT'S RIGHT.

16 MS. BONN: AND THEY HAVE TO GIVE IT TO US. AND WE
17 THINK THAT HAS IT SORT OF BACKWARDS.

18 THE COURT: GOT IT. GOT IT.

19 MS. BONN: THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MS. BONN.

21 ALL RIGHT. FROM GOOGLE, FINAL COMMENTS.

22 MR. ANSORG: YES, YOUR HONOR. I WILL BE BRIEF.

23 AND WITH THE BALANCE OF MY TIME, I JUST WANT TO ADDRESS
24 FOUR DIFFERENT POINTS.

25 AND LET ME START OFF BY SAYING PLAINTIFFS ARE NOT IN THE

1 DARK, THEY JUST DON'T KNOW OR DON'T LIKE WHAT THE LIGHT IS
2 SHOWING. WE HAVE HAD 14 MONTHS OF DISCOVERY. THERE'S BEEN
3 30(B)(6) DEPOSITIONS ON THE VERY TOPIC OF [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]. SO IT'S NOT AN ISSUE WHERE
7 THERE'S NO REBUTTAL, IT'S ONE WHICH THERE'S TESTIMONY SAYING
8 WHY THAT'S NOT THE CASE.

9 PLAINTIFFS ARE ASKING FOR SOMETHING WHICH DOESN'T EXIST
10 FOR A REASON, YOUR HONOR, AND THAT'S BECAUSE PRIVATE BROWSING
11 WHEN YOU ARE LOGGED OUT, PREVENTS IDENTIFICATION BY DESIGN.
12 GOOGLE SYSTEMS ARE DESIGNED SO THAT THAT INFORMATION, THE
13 LOGGED OUT PRIVATE BROWSING USER IS NOT GOING TO BE IDENTIFIED.

14 OTHER BROWSERS IN PRIVATE BROWSING MODE WORK THE SAME WAY.
15 THIS SHOULDN'T BE A SURPRISE TO PLAINTIFFS BECAUSE THEY
16 SUBPOENAED APPLE, MICROSOFT, MOZILLA AND ASKED FOR INFORMATION
17 SUFFICIENT TO IDENTIFY ALL USERS WHO USE PRIVATE BROWSING MODE,
18 AND EACH OF THOSE COMPANIES INFORMED THEM THAT THAT INFORMATION
19 DOES NOT EXIST.

20 SO PLAINTIFFS ARE ASKING US, THEREFORE, TO FINGERPRINT
21 USERS SO THAT THEY COULD IDENTIFY THEM BY NAME. NOW, EVEN IF
22 SOMETHING LIKE THAT COULD BE DONE IN ONE FORM OR ANOTHER, IT
23 PRESENTS PROFOUND PRIVACY IMPLICATIONS, YOUR HONOR.

24 AND THE BURDEN TO DO IT IS SIGNIFICANT. THERE'S A BIG
25 DIFFERENCE BETWEEN AN ENGINEER SAYING, I'M CONCERNED THAT

1 COMBINING USER AGENT WITH AN IP ADDRESS COULD IDENTIFY A
2 PERSON, AND THEN ACTUALLY DOING THAT FOR ALL POTENTIAL CLASS
3 MEMBERS IN THE UNITED STATES.

4 WE WOULD HAVE TO GO OUT AND BUILD NEW SYSTEMS, VERIFY THEM
5 IN DIFFERENT FORMS. AND THE AMOUNT OF INFORMATION AT THE
6 [REDACTED] LEVEL, IT'S AN EXTREMELY BURDENSOME EXERCISE, AND ONE
7 THAT'S SURPRISED LAWYERS IN THE PRIVACY CASE THEY ARE SEEKING
8 TO BRING.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 INSTEAD, NOW PLAINTIFFS ARE ASKING US TO ENGAGE IN THE
15 SAME FINGERPRINTING STEPS, ASKING US TO SEARCH FOR ALL USER
16 AGENTS, TIED TO A VERY SPECIFIC USER AGENT. IT'S A BIT LIKE
17 ASKING THE DMV, PROVIDE ME ALL RECORDS FOR EVERY TOYOTA SIENNA
18 YOU HAVE. THESE AREN'T DESIGNED TO IDENTIFY THE INDIVIDUAL
19 DATA.

20 AT ONE POINT PLAINTIFFS SAY THAT IF YOU LOG IN IN YOUR
21 PRIVATE BROWSING MODE SESSION INTO GAIA, EVERYTHING YOU DID
22 BEFORE IS JOINED WITH YOUR INFORMATION. AND THAT'S NOT TRUE.
23 AND IT'S SOMETHING THAT COULD BE EASILY TESTED. IF PLAINTIFFS
24 GO IN, THEY CONSENT TO THE DIFFERENT SETTINGS, VISIT THE SITES,
25 THEY COULD DO IT WHEN THEY ARE LOGGED IN, THEY COULD DO IT WHEN

1 THEY ARE LOGGED OUT, THEY COULD SEE IF ANY OF THAT INFORMATION
2 ENDS UP. IT DOESN'T, IT'S NOT THERE. SO THAT'S SIMPLY NOT
3 TRUE.

4 BUT EVEN IF IT WERE TRUE, YOUR HONOR, IT WOULDN'T HELP
5 PLAINTIFFS BECAUSE THEY DEFINED THE CLASS IN A WAY IN WHICH
6 THEY NEVER LOG IN IN ONE FORM OR ANOTHER.

7 FINALLY, AND I KNOW THIS GOT LOST IN THE PRESENTATION,
8 YOUR HONOR, BUT WHEN MS. BONN CLOSES ON SAYING THE PPID IS
9 MAPPED TO THE [REDACTED], THAT'S EXACTLY THE CONFUSION I WAS
10 TRYING TO ADDRESS EARLIER.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 PLAINTIFF'S REQUEST FOR SOURCE CODE AND CLEAN ROOM ACCESS
19 WHEN WE DON'T HAVE THOSE BASICS WORKED OUT, ARE NOT WARRANTED.

20 AND WITH THAT, I CONCEDE MY TIME. THANK YOU FOR YOUR
21 PATIENCE.

22 MR. SHAPIRO: CAN I HAVE 60 SECONDS ON CLEAN ROOM,
23 YOUR HONOR?

24 THE COURT: YOU HAVE 60 SECONDS ON CLEAN ROOM.

25 MR. SHAPIRO: SO, YOUR HONOR I'M HOPING THAT YOU,

1 LIKE AS DID THE SPECIAL MASTER, ARE NOT LEANING TOWARDS
2 ORDERING A CLEAN ROOM. BUT I JUST WANT TO EMPHASIZE THAT WHAT
3 AN EXTRAORDINARY STEP SOMETHING LIKE THAT WOULD BE, AND THE
4 IDEA THAT THAT'S GOING TO NARROW THE DISCOVERY FIGHTS IN THIS
5 CASE IS SEVERELY MISTAKEN.

6 IT'S LIKE THE HYDRA, THE DISPUTES THAT THAT WOULD GENERATE
7 ABOUT HOW IT WORKS, BUT NOT ONLY HOW IT WORKS, BUT WHAT
8 CONCLUSIONS COULD BE DRAWN FROM THEIR EXPERT NOODLING AROUND
9 USING GOOGLE TOOLS, WOULD MAKE WHAT'S JUST HAPPENED IN THE LAST
10 14 MONTHS SEEM LIKE NOTHING. IT WOULD MULTIPLY GREATLY, NOT
11 ONLY THE WORK FOR EVERYONE, BUT THE DISPUTES FOR THIS COURT AND
12 FOR THE SPECIAL MASTER.

13 THANK YOU.

14 THE COURT: THANK YOU.

15 ALL RIGHT. NOPE, WE ARE DONE, WE ARE DONE. I'VE HEARD
16 PLENTY. AND I APPRECIATE EVERYONE KEEPING TRACK, AND TRYING TO
17 TRACK AND RESPOND APPROPRIATELY, AND I'M ONLY LOOKING DOWN AT
18 MY PHONE BECAUSE IT KEEPS TURNING OFF MY TIMER, AND I
19 APOLOGIZE, I'M NOT CHECKING SPORTS SCORES OR ANYTHING ELSE.

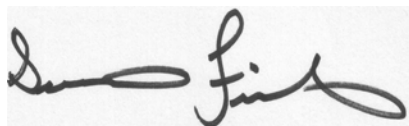
20 OKAY. WE WILL TAKE 10 MINUTES AND THEN COME BACK FOR THE
21 CALHOUN CASE. THAT WILL GIVE EVERYONE A CHANCE TO ADJUST
22 COMPUTERS AND PAPERS.

23 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 11/10/21